



**OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER
PROVINCE OF NEW BRUNSWICK**

**REPORT TO THE SPEAKER
OF THE
LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK
OF THE
INVESTIGATION/INQUIRY**

**BY THE HON. PATRICK A.A. RYAN, Q.C.
CONFLICT OF INTEREST COMMISSIONER**

**INTO ALLEGATIONS BY MR. CLAUDE WILLIAMS,
MLA FOR KENT SOUTH
OF VIOLATIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT*
BY PREMIER SHAWN MICHAEL GRAHAM, MLA FOR KENT**

Report to the Speaker
of the
Legislative Assembly of New Brunswick
of the
Investigation/Inquiry
by the Hon. Patrick A.A. Ryan, Q.C.
Conflict of Interest Commissioner

Into Allegations by Mr. Claude Williams, MLA
for Kent South
of Violations of the *Members' Conflict of Interest Act*
by Premier Shawn Michael Graham, MLA for Kent

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THE WITNESS LIST AND INQUIRY DATES

Once the investigation of the allegation of a conflict of interest by Premier Graham was turned into an investigation and inquiry caused by the refusal of the Deputy Minister of Business New Brunswick and his counsel from the Office of the Attorney General to produce pertinent documents the inquiry proceeded formally. The following is a schedule of the inquiry dates, the witnesses and a reference to the main thrust of the testimony elicited. Transcript Index Exhibit Book, Part 2.

<u>Date</u>	<u>Witness</u>	<u>Testimony</u>
November 22, 2010	Bill Levesque	Deputy Minister of Business NB: his role in the guarantees.
December 7 & 8, 2010	Bill Levesque	Deputy Minister of Business NB: his role in the guarantees.
December 10, 2010	David Ferguson	Former Clerk of the Executive Council and Secretary of the Cabinet: his role in the guarantees.
December 20, 2010	John Watt	Former Project Executive Officer (Financial Officer) Business NB: Atcon Performance Bond; Atcon ignored contracts; Tozer guarantee; Atcon loans 2009.
December 21, 2010	John Watt	Former Project Executive Officer (Financial Officer) Business NB: New Brunswick companies supposed to get paid; Work on bridge stopped; Ernst & Young study.
January 12, 2011	John Watt	Former Project Executive Officer (Financial Officer) Business NB: Forbearance agreement; Purdy Crawford Committee.
January 28, 2011	Bill Levesque	Deputy Minister of Business NB: Interim decision on inspection of Documents.
January 28, 2011	Byron James	New Clerk of the Executive Council and Secretary of the Cabinet after the 2010 change in government: Records of Decision.

February 3, 2011	Bill Levesque	Deputy Minister of Business NB: The bridge guarantee.
February 28, 2011	Bill Levesque	Deputy Minister of Business NB: Personal guarantee of Robert Tozer; Resignation letter of Alan Graham.
April 5, 2011	David Ferguson	Former Clerk of the Executive Council and Secretary of the Cabinet: Memorandum to Executive Council.
April 5, 2011	Sabrina Noble	Manager of office operations as well as Research and Planning Officer Executive Council Office: Explains executive council documents.
April 5, 2011	Pamela Gagnon	Director of Information Management and Technology Branch, Finance Department: Provides e-mail account system.
April 5, 2011	Donald J. MacTavish	New Brunswick Internal Services Agency, Help desk Analyst, Assisted David Ferguson.
April 8, 2011	Robert Tozer	President and CEO of Atcon.
May 17, 2011	Alan Graham	Director of Vänerply and Atcon Consultant, former Deputy Premier, now federal commissioner.
May 25 & 26, 2011	Shawn Graham	MLA, former Premier.
September 26, 2011	Alan Graham	Director of Vänerply and Atcon Consultant (recalled).

Documents Provided to Inquiry

<u>Date</u>	<u>Briefs</u>	<u>Counsel</u>
December 16, 2010	Brief on Law	Counsel John B.D. Logan, Esq. and Heather Hobart, Esq. Office of the Attorney General

December 17, 2010	Brief on Law	Counsel R. Gary Faloon, Q.C. Counsel on behalf of the Inquiry
August 4, 2011	Brief on Law	Counsel Allison Whitehead, Q.C. on behalf of Shawn Graham
August 10, 2011	Brief	Counsel R. Gary Faloon, Q.C. on behalf of the Inquiry
August 18, 2011	Response to the Aug. 4 Brief of Counsel for Shawn Graham	Counsel R. Gary Faloon, Q.C. on behalf of the Inquiry
October 20, 2011	Brief	Counsel Allison Whitehead, Q.C. on behalf of Shawn Graham
November 30, 2012	RSM Richter Inc. Report re: Atcon Holdings Inc. after the fact Executive Summaries	<u>Exhibit book, Part 2, Tab 60</u>

INTRODUCTORY REMARKS CONCERNING THE ALLEGED BREACH

[1] On April 7, 2010, Claude Williams, then an opposition Member of the Legislative Assembly of New Brunswick for Kent South, filed an affidavit with the Conflict of Interest Commissioner requesting an investigation into certain conduct of the then Premier, the Honourable Shawn Michael Graham. In his affidavit he alleges that the Premier breached section 4 of the *Members' Conflict of Interest Act* by furthering the financial and business interests of the Premier's father, Alan R. Graham.

[2] The matter of the complaint concerns the alleged participation of Premier Graham in the granting by the province of multi-million dollar loan guarantees in 2008 and 2009 in favour of a number of related companies known as the Atcon Group while the Premier's father was a director and consultant to one or more of the related Atcon companies, notably as a director of a company in Sweden called Vanerply AB and a paid consultant to Atcon companies. The principal shareholder and operating mind of all the Atcon related companies is Robert W. Tozer, then a major construction contractor of Miramichi, New Brunswick.

[3] In 2008 the Atcon Group received a loan guarantee for \$13,362,845. In 2009 an application by the Atcon Group for \$50,000,000 financial assistance was consistently rejected at various levels by Business New Brunswick but approved and granted by the Executive Council while the fortunes of Atcon were rapidly deteriorating despite massive financial assistance from the province, ending in the bankruptcy of the Atcon companies.

THE ACT

[4] The pertinent sections of the *Members' Conflict of Interest Act* chapter, M-7.01 SNB 1999 are s. 4 the conflict of interest section applying to all members and being the principal section in play here; s. 13 and s. 15 the procedure to be followed on a conflict of interest at the Executive Council level:

Conflict of interest

4 A member shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is the opportunity to further the member's private interest or to further another person's private interest.

Procedure on conflict of interest

13 A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Assembly or the Executive Council, or a committee of either of them, shall, if present at a meeting considering the matter,

(a) disclose the general nature of the conflict of interest, and

(b) withdraw from the meeting without voting or participating in consideration of the matter.

Procedure on conflict of interest

15 A member of the Executive Council who has reason to believe that he or she has a conflict of interest with respect to a matter that requires that member's decision shall report that possible conflict to the President of the Executive Council and ask the Premier or Deputy Premier to appoint another member of the Executive Council to perform the member's duties in the matter for the purpose of making the decision, and the member who is appointed may act in the matter for the period of time necessary for the purpose.

THE FINANCIAL ASSISTANCE

[5] The Atcon companies and Robert Tozer were not strangers to Business New Brunswick. His companies had come knocking on the provincial government door with

abundant success many times over the years. He was politically colour blind in his unabashed demands for financial assistance from a succession of governments.

[6] The evidence shows a history of considerable financial assistance from government as the Atcon companies grew in importance to the local and regional economy, to the strength of the payrolls, and to an increase in the full-time and part-time employment numbers.

[7] In 2007 Atcon Holdings Inc. claimed to have a payroll of \$76 million; in 2008, \$80 million. By 2009 there were 16 Atcon related companies. The financial structures of the companies collapsed, brought about, among other things, by the inability to meet the burden of an absence of capital. The principal banker at the time of the break down, the Bank of Nova Scotia, was fully secured by Atcon assets and the Province of New Brunswick's multi-million dollar guarantees.

THE INQUIRY PROCESS

[8] In order to cogently follow the proceedings it is necessary to explain the process when a complaint is made against a Member of the Legislative Assembly alleging that the member is in a conflict of interest. This section of my report will explain the mechanical part of the process but not the evidence adduced.

[9] Any person has the right to request an investigation alleging that a member has breached the *Act*. In short, this would ordinarily be referred to as the complaint although the word "complaint" is not used in the legislation.

[10] In order to avoid frivolous, vexatious or bad faith requests or those without merit, the *Members' Conflict of Interest Act* requires that the request for an investigation be in the form of an affidavit. Further, the affidavit must set out the grounds for the person's belief that there is a conflict and describe the nature of the alleged breach of the *Act*.

[11] Once the preliminary steps have been satisfied the Commissioner can proceed with an investigation with or without conducting an inquiry. In the present case the investigation was continued as an inquiry because of the refusal of Business New Brunswick to produce key documents for my inspection and provide critical information. I hasten to add that Premier Graham cooperated and there is no evidence that he was in any way responsible for the obstruction.

[12] By continuing the investigation as an inquiry, an inquisitorial process, I followed a procedure that was, in some respects, much like a court process, that is, by summoning witnesses and receiving their testimony under oath. The admissibility of evidence is much broader than in a trial.

[13] This process gave me the authority to order the production of critical documents for my inspection, documents that would otherwise be denied production on the grounds of secrecy, privilege or convention. All these grounds were indeed raised and contributed to the increased cost of the inquiry.

[14] The Premier was represented by senior counsel throughout.

[15] The proceedings took place at the Federal Court in Fredericton and were closed. They were closed because the report of the Commissioner remains confidential until it is laid before the Assembly or filed with the Clerk of the Legislative Assembly if the Assembly is not sitting. Upon conclusion of the investigation/inquiry the Commissioner has an obligation to the member before completing the inquiry report. Where it appears that the report may adversely affect the member, the Commissioner must inform the member of the particulars of the report and give the member the opportunity to make representations before the Commissioner completes the report to the Legislative Assembly.

<p>Request for investigation 36(1)Any person may request in writing that the Commissioner investigate an alleged breach of this Act by a member.</p> <p>36(2)A request under subsection (1) shall be in the form of an affidavit and shall set out the grounds for the belief and the nature of the alleged breach.</p> <p>Investigation and inquiry 37(1)On receiving a request under section 36, the Commissioner may conduct an investigation with or without conducting an inquiry.</p> <p>37(2)The Commissioner shall provide the member who is the subject of the investigation with reasonable notice and shall give the member an opportunity to respond to the allegation.</p> <p>37(2.1)When the Commissioner conducts an investigation or an inquiry under this section, the member who is the subject of the request under section 36 shall respond promptly and completely to all of the Commissioner's questions and requests for information.</p> <p>37(3)Where the Commissioner elects to conduct an inquiry under this section, the Commissioner has all the powers, privileges and immunities conferred on a commissioner under the <i>Inquiries Act</i>.</p> <p>Report of Commissioner 40(2)Where it appears to the Commissioner that a report may adversely affect a member, the Commissioner shall inform the member of the particulars and give the member the opportunity to make representations before the Commissioner completes the report.</p> <p>40(3)The report of the Commissioner shall set out (a)the facts found by the Commissioner,</p>	<p>Demande d'investigation 36(1)Toute personne peut demander par écrit au Commissaire de mener une investigation sur une contravention alléguée à la présente loi par un député ou un membre du Conseil exécutif.</p> <p>36(2)Une demande prévue au paragraphe (1) doit être établie sous la forme d'un affidavit et doit indiquer les motifs de la personne et la nature de la contravention alléguée.</p> <p>Investigation et enquête 37(1)Lorsqu'il reçoit une demande en vertu de l'article 36, le Commissaire peut faire une investigation tout en menant ou non une enquête.</p> <p>37(2)Le Commissaire doit fournir au député ou au membre du Conseil exécutif qui fait l'objet de l'investigation un avis raisonnable et doit lui donner la possibilité de répondre à l'allégation.</p> <p>37(2.1)Lorsque le Commissaire mène une investigation ou une enquête en vertu du présent article, le député ou le membre du Conseil exécutif qui fait l'objet de la demande en vertu de l'article 36 doit répondre promptement et de manière exhaustive à toutes les questions et demandes de renseignements du Commissaire.</p> <p>37(3)Lorsque le Commissaire choisit de mener une enquête en vertu du présent article, le Commissaire a tous les pouvoirs, privilèges et immunités dont dispose un commissaire en vertu de la <i>Loi sur les enquêtes</i>.</p> <p>Rapport du Commissaire 40(2)Lorsqu'il apparaît au Commissaire que son rapport pourrait nuire à un député ou à un membre du Conseil exécutif, il doit, avant de terminer son rapport, l'informer de la situation et lui permettre de faire des représentations.</p> <p>40(3)Le rapport du Commissaire doit indiquer a)les faits qu'il a découverts,</p>
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<p>(b)the findings as to whether or not a member has breached the Act and the nature of the breach, and</p> <p>(c)the recommended sanction, if any.</p> <p>40(4)The Commissioner's report shall remain confidential until it is laid before the Assembly or filed with the Clerk of the Legislative Assembly under section 42 and no person shall disclose all or any portion of it before that time.</p> <p>2003, c.8, s.6; 2007, c.30, s.24.</p>	<p>b)ses conclusions sur la question de savoir si le député ou le membre du Conseil exécutif a contrevenu ou non à la présente loi et la nature de la contravention, et</p> <p>c)la sanction recommandée, le cas échéant.</p> <p>40(4)Le rapport du Commissaire doit demeurer confidentiel jusqu'à ce qu'il soit soumis à l'Assemblée ou déposé auprès du Greffier de l'Assemblée législative en vertu de l'article 42 et nul ne peut divulguer tout ou partie de ce rapport avant qu'il n'ait été ainsi soumis ou déposé.</p> <p>2003, c.8, art.6; 2007, c.30, art.24.</p>
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[16] The foregoing explains, in brief, the general procedure followed.

[17] Since the request for an investigation was filed certain events have occurred which need to be mentioned in order to keep the matter in perspective. On September 27, 2010 the Shawn Graham government fell and was replaced by the David Alward government. Although the government changed, Shawn Graham retained his seat as Member of the Legislature for the Riding of Kent. Jurisdiction over Mr. Graham continues.

PARTIES INVOLVED

[18] In the New Brunswick election of September 18, 2006, Shawn M. Graham formed the new government with a comfortable majority. The defeated former premier, Bernard Lord, resigned his seat and eventually David N. Alward became leader of Her Majesty's Loyal Opposition.

[19] During Premier Graham's tenure in office many applications for financial assistance came before the government department known as Business New Brunswick. The ultimate decision on whether financial assistance is granted is made by the Executive Council often referred to as the Cabinet.

[20] An extremely large request for assistance by way of guarantees came before Business New Brunswick and the Executive Council from the Atcon Group of companies. The key corporation in the Atcon Group was a construction company from the Miramichi region. Normally, Business New Brunswick did "not assist with construction contract financing or performance bonding." (Exhibit 118 Privileged) Here, it did.

[21] The Premier's father, Alan R. Graham, was a director of one of the Atcon related companies, Vänerply AB, and had been a director for many years. He may also have been a shareholder of OPI AB a company that owned Vänerply AB. Alan Graham was also a paid consultant on retainer with Atcon. All of the Atcon Group of companies were controlled by one man, Robert William Tozer.

[22] In the spring of 2010 Claude Williams, then a member of the opposition, requested an investigation into the matter of the financial assistance being given to the Acton Group. He alleged that in participating in the Executive Council guarantees the Premier, as President of the Executive Council, was in conflict by furthering the financial and business interests of his father.

THE AFFIDAVIT AND THE RESPONSE IN JUXTAPOSITION

[23] The request for an investigation into the conduct of Premier Graham and his written unsworn response are reproduced in juxtaposition here except for the exhibits. The remarks in brackets to exhibits A to G are mine. The Williams' affidavit and Graham response are in the Exhibit Book, Part 2 in their original forms:

<p>NEW BRUNSWICK CONFLICT OF INTEREST COMMISSIONER</p> <p>IN THE MATTER OF A REQUEST FOR AN INVESTIGATION UNDER THE <i>MEMBERS' CONFLICT OF INTEREST ACT</i>, CHAPTER M-7.01, [STATUTES] OF NEW BRUNSWICK, 1999.</p> <p>LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK</p> <p>REQUEST FOR AN INVESTIGATION INTO THE CONDUCT OF SHAWN GRAHAM, [PREMIER] OF THE PROVINCE OF NEW BRUNSWICK</p> <p style="text-align: center;"><u>AFFIDAVIT</u></p> <p>I, Claude Williams, of the Village of Saint-Antoine, County of Kent and Province of New Brunswick, Member of the Legislative Assembly of New Brunswick for Kent-South, MAKE OATH AND SAY AS FOLLOWS:</p> <ol style="list-style-type: none"> 1. I am Claude Williams, a Member of the Legislative Assembly for the Province of New Brunswick, and, as such, I have personal knowledge of the matters deposed to herein except where otherwise stated. Where otherwise stated, I believe the information to be true. 2. Shawn Graham is a Member of the Legislative Assembly of New Brunswick and has been the Premier of the Province of New Brunswick since October 2006. 3. [Alan] Graham is the father of the said Shawn Graham. 4. The said [Alan] Graham currently sits on the Board of Directors of a mining and petroleum company named PetroWorth Resources. 	<p>Attention: Hon. Patrick A.A. Ryan, Q.C.</p> <p>Dear Sir:</p> <p>Re: Premier Shawn Graham – Complaint by Claude Williams sworn April 7, 2010</p> <p>In regard to the aforementioned affidavit, my response is as follows:</p>
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<p>5. Prior to [Alan] Graham being appointed to the Board of Directors for PetroWorth Resources, [Alan] Graham was a member of the Board of Directors of Vanerply, a subsidiary of the ATCON group of companies.</p> <p>6. I have reviewed the information posted on the websites of ATCON and Vanerply and verily believe that Vanerply became a subsidiary of the ATCON group in January 2001.</p> <p>7. Attached hereto and marked as Exhibit "A" is a copy of the information posted on the ATCON website, including a link to its subsidiary, Vanerply.</p> <p>(Exhibit "A" describes the location and set up of the plant in Sweden)</p> <p>8. Attached hereto and marked as Exhibit "B" is a copy of the information posted on the Vanerply website, including a reference to being part of the Atcon Group.</p> <p>(Exhibit "B" describes the company's product and the connection to the Atcon Group)</p> <p>9. Having reviewed the information posted on the ATCON website, I verily believe that Robert Tozer is the President and Chief Executive Officer of the ATCON group of companies and its subsidiaries.</p> <p>10. Attached hereto and marked as Exhibit "C" is a copy of the information posted on the ATCON website which forms part of my belief expressed in the preceding paragraph.</p> <p>(Exhibit "C" is a message from Robbie Tozer, head of the Atcon Group)</p> <p>11. I verily believe that Mr. Tozer is also the Chairman of the Board of Vanerply.</p> <p>12. Attached hereto and marked Exhibit "D" is a copy of a corporate profile of Vanerply in which it is indicated that Robert Tozer is the Chairman of the Board of Vanerply.</p> <p>(Exhibit "D" is Vanerply's corporate profile)</p> <p>13. Attached hereto and marked as Exhibit "E" is a copy of the information posted on the Reuters News Agency website regarding Alan Graham. The information contained on the website indicates, and I verily believe, that the said Alan Graham serves on the Board of Vanerply.</p> <p>(Exhibit "E" is a brief biography of Alan</p>	<p>1. Alan Graham was a Director of Vanerply AB for approximately nine or ten years resigning in May 2009. He was never a shareholder. I had no knowledge of my father's responsibilities or his remuneration.</p> <p>2. Alan Graham has <u>not</u> otherwise been a Director or Shareholder of Atcon Group during any period since I have been Premier of the Province of New Brunswick.</p>
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<p>Graham and his connection to Vanerply)</p> <p>14. I verily believe that the headquarters of Vanerply are located in [Otterbäcken], Sweden.</p> <p>15. I verily believe that the headquarters of the ATCON group of companies is located in Miramichi, New Brunswick, Canada.</p> <p>16. I have reviewed the various Orders-in-Council and verily believe that since August 5, 2008, approximately \$63,362,845.00 of New Brunswick tax dollars have been provided in financial assistance to ATCON and its subsidiary group of companies.</p> <p>17. I verily believe that said individuals, Robert Tozer and [Alan] Graham, were on the Board of Directors of Vanerply and/or ATCON when ATCON received financial assistance from the New Brunswick Provincial Government.</p> <p>18. On August 5, 2008 while [Alan] Graham was on the Board of Directors of Vanerply, the New Brunswick government issued a press release stating that \$13,362,845.00 was provided to ATCON by way of a loan guarantee. [A] copy of the said press release is attached hereto as Schedule "F" and forms part of my belief.</p> <p>(Exhibit "F" is a Business New Brunswick news release in praise and support of Atcon)</p> <p>19. On March 26, 2009, by way of an Order in Council, the government of the Province of New Brunswick authorized a further \$50,000,000.00 in loan guarantees to ATCON. A copy of the said Order-in-Council is attached hereto and marked as Exhibit "G."</p> <p>(Exhibit "G" is a copy of the \$50 million Order in Council)</p> <p>20. I verily believe that Shawn Graham in pith and substance violated the <i>[Members'] Conflict of Interest Act</i>. I believe that section 4 of the <i>Act</i> is very clear and should have prohibited the Premier from authorizing financial assistance to ATCON. He should have reasonably known that in making the decision there was an opportunity to further his [father's] financial and business interests.</p> <p>21. I verily believe that [Alan] Graham was a member of the Board of Directors of a company receiving financial support from the New Brunswick Provincial Government when his son, Shawn Graham, was Premier. I believe the obvious nature of this violation warrants an</p>	<p>3. Both the 13 Million ("M") and 50M loan guarantees went through the normal channels at Business New Brunswick, i.e., senior management, Industrial Development Board, Board of Management and Cabinet.</p> <p>4. The 13M loan guarantee was related to a bridge contract in the North West Territories, in particular, the 13M was used to assist in construction of a steel fabrication mill in the Miramichi, which in turn helped to secure the bridge contract.</p> <p>5. The bridge contract was cancelled through no fault of Atcon Group or the Province. It is anticipated, that the 13M will be recovered as a result of the cancellation of the contract.</p> <p>6. The 50M loan guarantee was advanced to allow Atcon Group</p> <p style="padding-left: 40px;">a) To finish the steel fabrication mill (10M);</p> <p style="padding-left: 40px;">b) To pay off high interest rate loans (20M); and</p> <p style="padding-left: 40px;">c) To secure an operating line of credit (20M).</p> <p>7. The 50M loan guarantee was conditional on several factors, one of which was that Vanerply be sold. Further, it could not reject any offer greater than 18M and it had to be sold no later than July 20, 2010. <u>All</u> proceeds of the sale were to be applied to the loan guarantee of 50M.</p> <p>8. The 50M loan guarantee was approved by the Province in March 2009; Alan Graham resigned from the Board of Directors of Vanerply in May 2009; Atcon Group met their numerous conditions/obligations in June 2009; The money (from the loan guarantee) began being paid in July 2009.</p> <p>9. Atcon group employed 1,785 to 2,100 people, the vast majority of whom either lived on the Miramichi, or were from the Miramichi, and its failure would have major economic consequences for that region and the Province.</p> <p>10. At no time did I consider that I had reasonable grounds to believe that I had a conflict of interest in dealing with the aforementioned loan</p>
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<p>investigation into Shawn Graham's conduct.</p> <p>22. I make this Affidavit in support for an investigation under section 36 of the [Members'] <i>Conflict of Interest Act</i> and for no other or improper purposes.</p> <p>23. My request for an investigation is not frivolous or vexatious and is made in good faith. I verily believe the Premier knew or reasonably should have known that his decisions to use New Brunswick tax dollars directly advanced the financial and business interests of his father [Alan] Graham.</p> <p>SWORN TO BEFORE ME at the City of Fredericton in the Province of New Brunswick, this 7th day of April, 2010.</p> <p><u>Yassin Choukri, Q.C.</u> A Commissioner being a Solicitor</p> <p><u>Claude Williams</u> Claude Williams</p>	<p>guarantees to Atcon Group.</p> <p>If you have any further questions or inquiries, please feel free to contact me or my solicitor Allison Whitehead, Q.C.</p> <p>Yours truly,</p> <p>Shawn Graham Premier</p>
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THE OBSTRUCTION

Investigation becomes inquiry

[24] Following the request in writing that an investigation be conducted into the allegation that Premier Graham was in breach of the *Members' Conflict of Interest Act*, I informed the parties in writing that I would conduct the matter as a simple investigation and that it was not necessary, at that time, to conduct the matter as an inquiry. Then, I had superb cooperation from the various provincial government personnel who were in possession of documents or had personal involvement in the Atcon requests for financial assistance, including the Deputy Minister of Business New Brunswick, Bill Levesque.

[25] Mr. Levesque had come to his position as Deputy Minister in the fall of 2009. This was after the money had been approved and Atcon was descending into deeper financial trouble. Prior to his appointment on October 5, 2009, he served as a member of the New Brunswick Industrial Development Board (NBIDB) at its monthly meetings and was familiar with Atcon's requests for financial aid, particularly the \$50 million in guarantees (\$10 million-fabrication plant, \$20 million to retire a high interest loan and \$20 million for working capital). In fact the New Brunswick Industrial Development Board rejected the Atcon application on March 16 and sent a negative recommendation to the Cabinet shortly before the Cabinet approved the guarantees on March 26, 2009.

[26] I was concerned with the “due diligence” supposedly performed by Business New Brunswick and referred to reverently and frequently in Hansard by various members assuring that the government had done its due diligence before approving the guarantees. As part of the investigation Mr. Levesque provided me with a detailed procedure that applications for financial aid are supposed to follow; this was due diligence. Unfortunately, the stated procedure and what was followed do not coincide. Letter of August 9, 2010 – Bill Levesque to Commissioner Ryan Re: Financial Assistance Process Due Diligence Exhibit Book, Part 2, Exhibit A of the investigation.

[27] The evidence shows that the diligent employees of Business New Brunswick were hampered in every way in trying to get current information from Atcon. It was particularly frustrating. Business New Brunswick instead of getting audited statements from Atcon, were told that they could travel to Miramichi and look at the books. They did. The situation was so ridiculous that there was not even a proper application for the guarantees by Atcon. A financial application was cobbled together by a Business New Brunswick financial officer, John Watt, since retired. He was so familiar with Atcon over the years that he could do this so that there existed at least the semblance of a record for action. Mr. Watt’s consistent, if not persistent, recommendation was contra the guarantees.

[28] When I requested that Deputy Minister Levesque provide me with the details of how Business New Brunswick followed the detailed procedure that he had supplied to me, the information supply from him faltered, then all but dried up. When I asked to inspect certain documents I received correspondence from counsel in the Office of the Attorney General that the documents would not be given to me for my inspection. I took exception to this refusal and saw that the only way I would be able to view the documents and circumvent this obstruction would be through the power of an inquiry. Consequently, I turned the process into an investigation and inquiry. Deputy Minister Levesque was joined by Deputy Minister Byron James, Clerk of the Executive Council, in refusing to produce the documents for my inspection, documents of every nature and kind that went to the Executive Council. I needed to inspect the documents in order to determine what participation the Premier had in the decision making process as it related to Alan Graham. My demands to inspect the documents were vigorously defended by way of argument and the filing of briefs.

[29] My written interim decision is found in the Exhibit Book, Part 2 ordering Deputy Minister Levesque and Deputy Minister James to produce for my inspection the various documents over which they claimed privilege on the grounds of Cabinet confidentiality, convention and the *Interpretation Act*.

[30] In my decision I relied upon decisions of the Supreme Court of Canada, particularly that of Mr. Justice La Forest in *Carey v. The Queen in Right of Ontario*, [1986] 2 S.C.R. 637.

Ordering the disclosure of Cabinet documents for the Court's inspection, he went on to conclude at para. 85:

Divulgence is all the more important in our day when more open government is sought by the public. It serves to reinforce the faith of the citizen in his governmental institutions. This has important implications for the administration of justice, which is of prime concern to the courts.

See also Alan W. Bryant, Sidney N. Lederman and Michelle K. Fuerst, Sopinka, Lederman & Bryant: *The Law of Evidence in Canada*, 3rd ed., (Markham: LexisNexis, 2009), at p. 910:

In addition to concerning itself with the protection of confidential communications within certain important societal relationships, privilege may be invoked to preserve society as a whole when disclosure may jeopardize the national security of the country or impair the expeditious administration of the government [...] These categories of privilege are based upon diverse sets of external values worthy of protection even in the face of hindering the effectiveness of the trial process. Accordingly, there always exists a tension when the doctrine of privilege is invoked as it consequentially obstructs the truth-finding process. That being the natural result, the courts have not shown great eagerness to proliferate the areas of privilege. Chief Justice Warren Burger put it this way in a celebrated American case [of *Nixon, supra*]:

Whatever their origins, these exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth.

[31] The arguments advanced by counsel for the Attorney General relating to privilege failed for the reasons of open government put forward by Justice La Forest.

[32] Counsel for the Attorney General, acting on behalf of the two deputy ministers, also argued that “convention” prevented the deputies from producing the documents. According to the argument, a change in government means that the new government does not have access to the Cabinet records of the previous government. I ruled that I am not an agent of the new government; I am an independent sworn officer of the Legislative Assembly, chosen by consent of the parties for the appointment. Everything that comes through my office is confidential. The inquiry is closed and the results of the inquiry remain confidential until my report is laid before the Legislative Assembly. Subsequent to that, all documents are destroyed except those originals that are returned to the Clerk

of the Executive Council. I will have more to say about the status of the legal process shortly.

[33] If convention trumps law the powers given by the Legislature under the *Members' Conflict of Interest Act* and the *Inquiries Act* to investigate conflict of interest breaches by members of the Executive Council and for the Assembly itself to impose sanctions would be frustrated. Convention does not trump law.

[34] The final argument posed by the agents of the Attorney General acting on behalf of the deputy ministers was that s. 32 of the *Interpretation Act* declares that the rights of the Crown are not affected by any Act or regulation unless it is expressly stated in the Act or regulation that the Crown is bound by it.

[35] My ruling on this argument was that the earlier cases that appeared to close the door found the door being reopened by the Supreme Court of Canada in *Alberta Government Telephones v. Canada (Canadian Radio-Television & Telecommunications Commission)*, [1989] 2 S.C.R. 225, per Dickson C.J.C. at p. 276; 280-281; *Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, per La Forest J. at p. 50.

[36] The result is that the purpose of the *Members' Conflict of Interest Act* and the *Inquiries Act* would be wholly frustrated unless, by necessary implication, the Crown is bound. Not making relevant Cabinet documents available for inspection by the Commissioner when a minister is implicated in the decision making at the Cabinet level would not simply be an inconvenience or an undesirable result but would render an inquiry futile, wholly frustrating the purpose of the *Acts*. S. 32 cannot be used to frustrate the legitimate interests of pursuing a conflict of interest at the highest level of office, that of a member of the Executive Council of government.

[37] A few paragraphs ago I said I would have more to say about the status of the legal process. It undoubtedly occurred to counsel for the various witnesses that in their objection to producing certain documents they should pursue the law with respect to judicial review of my demands to inspect documents. Here, they ran into a wall with my appointment as an officer of the Assembly.

[38] The obstacle to judicial review, simply put, is that any conclusions by me are recommendations to the Legislative Assembly which itself makes the final decision on the breach and any recommended sanctions. The Assembly is master in its own house. I am not the decider, I am the provider.

[39] The Supreme Court of Canada has weighed in on the issue of whether an officer of the Legislative Assembly holding an investigation and inquiry into a conflict of interest breach is subject to judicial review by a superior court justice (in New Brunswick this would be a Justice of the Court of Queen's Bench).

[40] In *New Brunswick Broadcasting Co. v. Nova Scotia* [1993] 1 S.C.R. 319 the issue was whether the *Canadian Charter of Rights and Freedoms* applied to a provincial Legislative Assembly. There, the Nova Scotia Assembly refused access to the media's cameras to the public gallery. McLachlin J. (as she then was), concurred in by L'Heureux-Dubé, Gonthier and Iacobucci JJ. supported the province's right to exclude television cameras. At paragraph 115 Justice McLachlin held:

I conclude that the written text of Canada's Constitution supports, rather than detracts from, the conclusion that our legislative bodies possess those historically recognized inherent constitutional powers as are necessary to their proper functioning.

[41] In support of my view that the Office of the Conflict of Interest Commissioner is not subject to judicial review when I, as Commissioner, am inquiring into an allegation of a breach of the *Members' Conflict of Interest Act*, I refer to:

Tafler v. Hughes, 161 DLR (4th) 511; 11 Admin LR (3d) 228; 49 BCLR (3d) 328
Lambert J.A., writing for the British Columbia Court of Appeal, held:

15. I have considered the decisions of the Supreme Court of Canada in **N.B. Broadcasting Co. v. Nova Scotia** [1993] 1 S.C.R. 319 and **Harvey v. A.G. New Brunswick** [1996] 2 S.C.R. 876. Both of these cases relate to provincial Legislative Assemblies. Neither of those cases decides conclusively the question of whether a decision of the Assembly or of an officer of the Assembly, with respect to the conduct or mis-conduct of a member of the Assembly acting in relation to his or her office, is amenable to judicial review. But in both cases Madam Justice McLachlin wrote careful reasons on that question and concluded that any decision with respect to discipline in relation to such conduct comes within the sphere of decision-making under the exclusive control of the Legislative Assembly itself and, as such, is not amenable to judicial review.

16. The **Harvey** case was decided after the judgment of Mr. Justice Melvin in this case and, of course, he did not have the benefit of that decision in preparing his reasons. But he relied on the **N.B. Broadcasting** case and, after quoting a number of passages from that decision, he said this:

Here, as I mentioned, the Commissioner is acting for and on behalf of the Legislative Assembly in providing that body with information and opinion. The nature of the investigation relates to the functioning of the member of the Legislative Assembly. Control over members or a member, or sanction of a member, remains with the Legislative Assembly. In my opinion, information gathering which may assist the Assembly in dealing with its own members is a vital step in the decision of the legislature and is necessary to the proper functioning of the Assembly as Madam McLachlin J. referred to in...the **New Brunswick Broadcasting** decision. Consequently, the manner in which it chooses to deal with its members in the context is one cloaked with privilege, the exercise of which is not reviewable.

17. I agree with that conclusion. In my opinion, the privileges of the Legislative Assembly extend to the Commissioner who is expressly made an officer of the Assembly by sub-section 10(1) of the *Members' Conflict of Interest Act*. In my opinion, decisions made by the Commissioner in the carrying out of the Commissioner's powers under the **Act** are decisions made within, and with respect to, the privileges of the Legislative Assembly and are not reviewable in the courts.

[42] A similar result came about in the case of *Morin v. Northwest Territories (Conflict of Interest Commissioner)* (1999), 29 C.P.C. (4th) 362 (N.W.T.S.C.) by Vertes J.; also at 1999 CanLII 6802.

[43] In the Supreme Court of Canada decision in *Canada (House of Commons) v. Vaid* [2005] 1 S.C.R. 667 at paragraph 29 the Court approved the privilege found in *Tafler v. British Columbia (Commissioner of Conflict of Interest)*.

AGENTS OF THE ATTORNEY GENERAL

[44] Counsel for the various government witnesses who were called to testify at the inquiry requested, sought or were offered representation by lawyers from the Office of the Attorney General. No matter whomsoever was contacted in government by counsel for the inquiry the employee was directed to tell counsel for the inquiry to contact a certain lawyer in the Office of the Attorney General.

[45] During the hearings it became apparent that the Office of the Attorney General had given counsel to various levels of government with respect to the Atcon requests for financial aid. This had been going on over a period of years. When I say "at various

levels” I mean that the advice of counsel was made at intake levels and at higher levels as the matters proceeded up to and including the level of the Executive Council. Whether the lawyers and the advice given at each level were the same even though different bodies with fresh ideas were different, the process smacks of a systemic conflict of interest. The process needs to be reviewed.

DESTRUCTION OF DOCUMENTS

[46] In order to look at all pertinent documents various witnesses were summoned to testify in the inquiry and were directed to produce their e-mails. E-mails produced on government computers belong to the government. Employees who use the government computers as though they are their personal computers run the risk of losing their privacy. Some exceptions may apply: *R. v. Cole*, 2012 SCC 53, Date: 20121019, Docket: 34268. In the case of one high ranking New Brunswick employee this happened. The employee was given a summons and promptly deleted the e-mails. Counsel for the inquiry was able to recover the e-mails. As it turned out there was nothing of value to the matter before the inquiry on the recovered documents. I chose, perhaps mistakenly, not to pursue contempt proceedings.

[47] Purging your e-mails when legally ordered to produce them is unacceptable; it is called spoliation, the destruction of evidence, and may constitute an obstruction of justice. If the evidence is not recoverable it may well lead to a presumption against the person, the spoliator.

MISLEADING THE INQUIRY

[48] A further episode occurred when a deputy minister misled the inquiry with no obvious purpose except perhaps known only to the man himself. The deputy minister was being questioned by counsel with respect to the financial exposure of the province on a \$13 million guarantee for Atcon relating to the Deh Cho Bridge project in the Northwest Territories in 2008. Following the change in government in the 2010 New Brunswick election the province had to replace a letter of credit with payment of the \$13 million. After Atcon’s construction deficiencies are corrected New Brunswick may receive some monies back.

[49] Events unfolded as follows: The existence of Order in Council, 2010-527 dated October 19, 2010, paying \$13,362,845 to the Northwest Territories replacing a loan guarantee to Atcon’s bank of April 3, 2008, for \$13,362,845 was not revealed to counsel for the inquiry by an agent of the Attorney General until January 7, 2011:

October 19, 2010

2010-527

Under subsection 5(1) of the Economic Development Act, the Lieutenant-Governor in Council gives his approval for the Minister of Business New Brunswick to enter into an agreement with the Government of the Northwest Territories and/or Deh Cho Bridge Corporation as appropriate, subject to the following:

- (a) payment by the Minister under the agreement shall not exceed \$13,362,845;
- (b) the agreement replaces the current Business New Brunswick guarantee amount of \$13,362,845 outstanding on the Letter of Credit for the Deh Cho Bridge project; and
- (c) the agreement shall terminate no later than six months after the rectification of Atcon Construction Inc. deficiencies.

Graydon Nicholas
Lieutenant-Governor

19 October 2010

[50] Although the authority to pay in place of the guarantee is dated October 19, 2010 and was known to the deputy minister, he testified one month later on November 22, 2010, as follows:

Q. In referring to the bundle of documents marked "Guarantee 2008" I've not been able to review the documents at the end of '09 and early 2010 in great detail, but my question is, Is the guarantee still out there, the \$13 million?

A. No, it has terminated.

Q. It's terminated?

A. It's terminated November 1st.

Q. All right.

A. It's November 1st.

Q. So the, the guarantee is gone? The Province will not have to pay on the \$13 million?

A. That's, that's correct.

Q. Did they pay out or did they...

A. The guarantee has... The guarantee is terminated on, on, on November 1st and the bank has not called [the loan].

Q. So that's the end of it?

A. The bank has not called [the loan]. The guarantee has been finished and...

Q. Did they give you the guarantee back? Has it been returned?

MR. LOGAN: Not, not to date, no.

A. No.

Q. Well, I don't see the need for any questions if that guarantee is, is not longer extant [extant].

THE COMMISSIONER: So, how much did that involve?

MR. FALOON: Nothing.

THE COMMISSIONER: Zero?

MR. FALOON: Yeah.

THE COMMISSIONER: That's the kind of guarantee you need.

MR. FALOON: It, it was... it was... it was to support a letter of credit.

THE COMMISSIONER: Oh, I see.

MR. FALOON: The letter of credit's been revoked and the guarantee is gone. So I don't see any reason to question him. We can come back to it, if necessary, but at this time my, my questions were based on whether or not there was a liability.

THE COMMISSIONER: So, we're done are we

MR. FALOON: Yes.

MR. LOGAN: Well, I would like to come back to it when we reconvene, perhaps, and I need to have some offline discussions with counsel...

THE COMMISSIONER: Of course.

MR. LOGAN:... and perhaps with yourself. I'd rather not do it here because it's...

MR. FALOON: With respect to the guarantee?

MR. LOGAN: Yes.

MR. FALOON: Oh, so it's not done.

MR. LOGAN: The guarantee is done.

MR. FALOON: All right.

THE COMMISSIONER: But... Yes. So, we're, we're adjourned then until December the 7th.

Transcript November 22, 2010
[Pages 191-193]

[51] A witness, when testifying swears "to tell the truth, the whole truth and nothing but the truth." To testify otherwise is misleading. When the hearing resumed on December 7, 2010 the deputy minister continued with his misleading testimony:

Q. No, you keep that and give me my copy back. That's correct,

thank you. The... As I understand it from your previous testimony, that guarantee is not... still...is not outstanding at the present time?

A. No, it has, it has, has been terminated November 1st. November 1st it has been...

Q. And there's no liability that can spring up in the future with respect to that guarantee? It's closed?

A. It's closed to this, yes. Um-hmm. Yes. Um-hmm.

MR. FALON: Thank you.

Transcript December 7, 2010

[Pages 231-232]

[52] The truth of the situation was not revealed until February 3, 2011 when the Deputy Minister of Business New Brunswick was again questioned at the inquiry about the \$13,362,845 paid by the province.

MR. FALON: Thank you."

Now, again, on December the 7th you were under oath, and you were under oath to tell the whole truth. Why did you not disclose in this testimony that the guarantee had been paid?

A. Well, again, the information...my reasoning for this is the information was not public information at that point, sir. You've asked me two questions. This one I don't remember. Under oath, from my knowledge and what I know and I understand is I cannot divulge information that is not public here as an OIC, an Order-in-Council. Obviously, when...Not obviously when we... the OIC was developed, we had discussions with our...with [our] lawyer, with our team on explaining the, the documents...

Q. I can barely hear you, Mr. Levesque.

A. Well, well I...At that point on November 1st it was expired. I... Once the agreement and the OIC is not public, for my sake as Deputy Minister, I, I...we don't divulge the information. It's confidentiality of Cabinet at that point, so I kept on that...on that principle.

THE COMMISSIONER: Why didn't you give us an explanation for...that explanation which you're giving now, that you were not able to divulge because there was something...a matter before Cabinet or whatever? Why, why wouldn't you give us that information?

A. Well, sir, I remember my...our team...I remember Mr. Logan standing up at that point stating that we had an issue but I, I did not, sir. I did not because of confidentiality of, of the Order-in-Council, confidentiality of the decision of Cabinet at that point.

Q. But as, as the Commissioner has asked you, could you not have given an explanation and said, "Look that's a very good question. I can't divulge it right now because the matter's before the Cabinet, but we will give you an answer in due course."

MR. LOGAN: I don't have...

THE COMMISSIONER: Sit, sit down, sit down, Mr. Logan.

Q. Could you have said that?

A. I could've said that, yes. I could have said that, Mr. Faloon, yes.

THE COMMISSIONER: Well, that would've been the whole truth.

A. I could have said that, yes.

Transcript February 3, 2011

[Pages 957-960]

[53] After 56 years as a litigator, lecturer, trial justice, appeal court justice and conflict of interest commissioner my experience is that the deputy minister, in so testifying, did not feel any sense of wrong doing, having persuaded himself that he was doing it in a good cause. He was wrong.

HISTORY OF ATCON APPLICATIONS

[54] As mentioned, Mr. Tozer and his Atcon Group were not strangers to what Premier Graham described as the money source of last resort, Business New Brunswick.

[55] Over the years, Atcon companies sought and received financial assistance from the Province of New Brunswick through Business New Brunswick.

- Atcon Plywood Inc. received a \$1,250,000 forgivable loan in 1991 which has since been forgiven as agreed based on employment; a \$2,500,000 loan guarantee in 1999 which has been released; a \$2,500,000 guarantee in 2004 with an **outstanding balance owed to the Province of about \$950,000** and a \$4,000,000 bridge loan issued in 2004 with an **outstanding balance of \$1,540,000.** Exhibit 11
- In 1997, Skyway Wood Products (Eastwood Furniture) received a \$384,000 loan and a \$532,000 forgivable loan from the CFB Chatham Redevelopment Fund. This company has been closed. The \$137,000 balance of the Loan and the unforgiven portion of the forgivable loan are estimated to be \$240,000. **The amount of outstanding assistance is \$377,000.** Exhibit 11
- In 2000, ARVIN received a \$400,000 forgivable loan which was not fully advanced. This is in connection with the renovations to the former Tech Sea building. The company moved its production equipment into the building and is starting to create the 80 required jobs. The long delay in the move and job creation results from the devastating

effects of the closure of COM DEV in Moncton, which was Arvin's biggest customer. **The outstanding assistance is in the amount of \$350,000.** Exhibit 11

- In 2000, Atcon Group received a \$50,000 grant cost sharing of bid preparation.
- In 2001, Envirem Technologies received a \$100,000 loan and a contribution of 100 acres of land at CFB Chatham. **The loan balance of about \$16,000 is outstanding.**

Exhibit 11

- In 2004, Atcon Veneer Products Inc. received a \$290,000 term loan guarantee and a \$300,000 working capital loan guarantee. This assistance was approved but was never put in place due to changes in the company's plans. Exhibit 11
- In 2007 Nutritec received a \$650,000 repayable loan. Nutritec also received a \$100,000 loan, which is a joint venture between Atcon and Couvoir Westco. **The outstanding assistance is in the amount of \$750,000.**

Exhibit 11

- In 2008 Atcon Industrial Services received a \$3,060,000 forgivable loan; a \$3,250,000 repayable loan and a \$1,190,000 contribution from RDC. **The outstanding assistance is \$6,310,000.** Exhibit 11
- In 2008, Atcon Holdings received a \$13,362,845 loan guarantee and has **an outstanding balance of \$13,362,845.**

Exhibit 11

- In 2009, Atcon Holdings received a \$50,000,000 guarantee. **The outstanding balance is \$50,000,000.** Exhibit 11
- Nelson Venture Capital received a \$210,000 venture capital loan made to the employees of Nelson Forest Products. Atcon assumed this liability and it has been repaid.

Exhibit 11

- As of November 22, 2010, the total amount of fees owed to Stewart McKelvey, the Advisory Board and Mr. Ron Nugent total \$100,926.17. Exhibit 131

Atcon's \$50 million "Application", so-called. – No formal application was ever presented.

[56] The following is a brief history of its course:

[57] January 13, 2009, a "Summary of Request" was prepared by Business New Brunswick to consider a request from Atcon Holdings Inc. for financial assistance in the form of a \$50 million loan guarantee. The recommendation was not to support the request. Exhibit 11

[58] January 19, 2009, Project Review Committee met to deal with this request and agreed with John Watt, the financial officer's recommendation to reject the company's request. Exhibit 13. The Industrial Development Board met on the same day to deal with this request and deferred its recommendation. Exhibit 12

[59] February 6, 2009, the financial officer, John Watt, prepared a memorandum dealing with the request in which he outlined the company's dismal track record. On February 9, the Industrial Development Board met again to discuss the request and concurred with the deferred departmental recommendation. Exhibit 15

[60] March 16, 2009, Industrial Development Board met again and concurred with the departmental recommendation to reject the company's request for the \$50 million loan guarantees. Exhibit 24. However, on March 26, 2009, Cabinet including Shawn Graham who chaired the meeting considered the application and approved it.

Exhibits 116 (and 120 Privileged)

[61] March 27, 2009, Business New Brunswick drafted offers to the company dealing with the financial assistance. Exhibits 30, 31 and 32

[62] April 23, 2009, Cabinet including Premier Graham who chaired the meeting met and amended the offer of financial assistance by deleting the words “portion of a revolving operating” as they appear in paragraph 3 of Order in Council 2009-130 replacing it with a \$20 million dollar guarantee of a 4-year term loan.

Exhibits 116 (and 121 Privileged)

[63] On April 29, 2009, final agreements dated April 24, 2009 were signed between Business New Brunswick and the company. Exhibits 35, 36 and 37

[64] June 4, 2009, Cabinet including Premier Graham who chaired the meeting met and amended the offer of financial assistance by allowing Atcon companies to bid on Province of New Brunswick construction contracts excluding P3 projects but that upon notification by the Province of New Brunswick of a competitive bid from another New Brunswick company, the Atcon company would withdraw its bid.

Exhibits 116 (and 122 Privileged)

[65] June 9, 2009, the acting Minister of Business New Brunswick, the Honorable Jack Keir, issued a letter to the company dealing with the restrictions on construction activities in New Brunswick by Atcon companies. Exhibit 46. A second letter was issued on the same date outlining that Atcon companies could bid on Province of New Brunswick-funded contracts excluding P3 projects while the financial assistance by way of loan guarantee(s) is in effect but that upon notification by the Province of New Brunswick that a competitive bid was received from another New Brunswick company Atcon had to withdraw from its bid. Exhibit 47

[66] June 11, 2009, Atcon provided a draft list of payments of its outstanding payables to Business New Brunswick. Exhibit 48

[67] June 12, 2009, Grant Thornton issued a letter dealing with its audits of Atcon Construction Inc., Envirem Technologies Inc. and Atcon Industrial Services Inc.’s internal controls and outlining material weaknesses and recommendations. Exhibit 49

[68] June 16, 2009, the acting Minister of Business New Brunswick issued a memorandum dealing with a comprehensive review of the company's operations.

Exhibit 50

[69] June 23, 2009, a conference call was held with Northwest Territories government representatives dealing with the Deh Cho Bridge. At this point it became apparent that the Northwest Territories were highly dissatisfied with Atcon's performance as a general contractor, and it was implied that the Deh Cho Bridge Corporation Ltd. shared that opinion of Atcon's performance. Letter from Gamble to Tozer with enclosures Exhibit Book, Part 2.

Exhibit 52

[70] June 30, 2009, the Minister of Business New Brunswick issued a letter to the Bank of Nova Scotia outlining that the letter of offer preconditions had been met. Exhibit 56

[71] During the month of June 2009, Atcon prepared a document entitled Certificate of Pending Litigation which showed millions of dollars in litigation against Atcon companies. Should Business New Brunswick's "due diligence" not have exposed this financial cancer before any monies had even been paid?

Exhibit 58

Atcon Construction Inc.

- Kildair Service Ltd. - \$338,147.67 – supply of materials – Notice of Registration of Memorial of Judgment filed May 22, 2009 (being paid from Trust during closing of refinancing)
- Atco Structures Inc. - \$17,334.30 – supply of service – Notice of Civil Claim filed May 29, 2009 (Canadian Natural Resources Ltd. "CNRL")
- PTI Premium Camps Services Inc. - \$650,716.50 - supply of service – Statement of Claim filed June 3, 2009 (Canadian Natural Resources Ltd.)
- Noralta Lodge Ltd. - \$281,454.30 – supply of service –Statement of Claim filed April 30, 2009 (Canadian Natural Resources Ltd.)
- Genivar Consultants Limited Partnership - \$335,464.40 – Statement of Lien filed May 6, 2009

- United Rentals - \$124,155.30 – supply of service – Statement of Lien filed May 20, 2009 (Canadian Natural Resources Ltd.)
- United Rentals - \$222,944.46 – supply of service – Statement of Lien filed May 20, 2009 (Canadian Natural Resources Ltd.)
- United Rentals - \$47,973.32 – supply of service – Statement of Lien filed May 20, 2009 (Canadian Natural Resources Ltd.)
- United Rentals - \$28,275.43 – supply of service – Statement of Lien filed May 20, 2009 (Canadian Natural Resources Ltd.)
- Stantec Consulting Ltd - \$131,547.82 – supply of service – Statement of Lien filed April 30, 2009 (Canadian Natural Resources Ltd.)
- Can-Traffic Services Ltd - \$2,811,739 – supply of material/service – Statement of Lien - expired
- Neutrino Trucking Ltd. - \$2,638,669 – supply of trucking services – Statement of Lien - expired
- Bruce Rendell – wrongful dismissal – Statement of Claim filed April 17, 2009
- Kevin Pytck – wrongful dismissal – Statement of Claim filed December 23, 2008
- Jose Rodriguez - wrongful dismissal – Statement of Claim filed May 8, 2007

Envirem Technologies Inc.

- Frederick Dunster & Sons Ltd. - \$36,442.50 – transport of compost – Notice of Action with Statement of Claim filed June 6, 2009 (this claim is included in listing of New Brunswick suppliers to be paid by end of June 2009)
- Canadian National Railways - \$165,169.25 USD - disputed amounts – Notice of Action with Statement of Claim attached, Notice of Intent to Defend, Statement of Defense filed January 19, 2009 on the basis that no amount is payable and the amounts claimed were claimed against an insolvent debtor in Maine, Morse Brothers. The action has been stayed because of the arbitration.

Atcon Industrial Services Inc.

- Russel Metals Inc. - \$114,123.33 – supply of metals – Notice of Action with Statement of Claim filed March 26, 2009 (this claim is

included in listing of New Brunswick suppliers to be paid by end of June 2009)

- Russel Metals Inc. - \$771,753.76 – supply of metals to Eastern Canadian Structures then to Scotia Sheet Metal (materials eventually supplied to expansion at fabrication facility) – Notice of Action with Statement of Claim filed March 10, 2009
- Rideout Tool and Machine Inc. - \$16,536.58 – supply of goods and services – Notice of Action with Statement of Claim filed May 6, 2009
- Eastern Fence Limited - \$47,220.85 – supply of materials re expansion of Fabrication facility – Notice of Action with Statement of Claim dated February 11, 2009 (this claim is included in listing of NB suppliers to be paid by end of June 2009)

Atcon Plywood Inc.

- Groupe Savoie Inc. - \$45,815.19 – supply of wood – Notice of Action with Statement of Claim filed January 28, 2009 (this claim is included on list to be paid with NB suppliers by end of June 2009)

[72] June 30, 2009, the \$20 million working capital guarantee, the \$20 million subordinated debt guarantee and the \$10 million capital expenditure guarantee between the Province of New Brunswick, Bank of Nova Scotia and Atcon were signed.

Exhibits 59, 60 and 61

[73] July 17, 2009, the acting Deputy Minister of Business New Brunswick, Phil LePage, issued a letter to the Bank of Nova Scotia outlining that Atcon Holdings had permission to draw an additional \$2 million under the capital expenditure guarantee.

Exhibit 63

[74] On the same date a second letter was issued to the Bank of Nova Scotia authorizing it to advance up to \$8 million of the capital expenditure loan guarantee. Exhibit 64. This was done following a request from Katrina Donovan of Atcon on July 16, 2009, to John Watt for assistance in dealing with the company's line of credit which would only support \$28 million and the need for working capital.

Exhibit 64A

[75] August 4, 2009, Ernst & Young Inc. issued a report to the Bank of Nova Scotia which indicated that the company had a serious working capital shortage and errors totaling \$2.8 million which would have a cumulative effect of reducing the June Borrowing Base by 10% from \$26.2 million to \$23.5 million.

Exhibit 71

[76] August 10, 2009, at the request of Atcon, Business New Brunswick prepared a summary request for \$2 million previously approved for capital projects to be disbursed instead for working capital and that the province release its first security interest in Brun-Way Highways Operations Inc. in favour of the Bank of Nova Scotia to enable bank financing of up to \$3 million for working capital. The recommendation was that Business New Brunswick not agree with the request. Exhibit 74

[77] On the same date New Brunswick Industrial Development Board met to deal with this request and the members of the board concurred with the department recommendation to reject the request. Exhibit 76

[78] August 12, 2009, Ciaran R. Dooley from the Bank of Nova Scotia communicated with Sadie Perron from Business New Brunswick regarding Atcon's lack of working capital and the \$9 million payable to Canada Revenue Agency. Exhibit 76A

[79] August 13, 2009 Cabinet including Premier Graham who chaired the meeting met and amended the offer of financial assistance authorizing a \$2 million advance previously approved for capital projects to working capital. Exhibits 116 (and 123 Privileged)

[80] August 18, 2009, Atcon correspondence to H. Smith of Canada Revenue Agency collections with a restructuring proposal. Exhibit 79K. During this month, a draft restructuring plan was prepared by Ernst & Young Inc. Exhibit 78

[81] August 21, 2009, advice to the Minister of Business New Brunswick was prepared providing a briefing on the Atcon Group of companies. It outlined that Atcon was indebted to the bank in an amount of about \$28.5 million with a margin security shortfall of about \$23 million and the request allowing the Bank of Nova Scotia a first security position as per Ernst & Young Inc. restructuring plan. Exhibit 79

[82] September 2, 2009, Cabinet including Premier Graham who chaired the meeting met to consider a restructuring plan prepared by Ernst & Young Inc. whereby the province was asked to release its security in favour of the Bank of Nova Scotia. This request was rejected but reconsidered on September 11, 2011, at which time it was approved.

According to the documents available to the Inquiry from the Executive Council it is not known whether Premier Graham was present at the September 11, 2009 meeting.

Exhibits 116 (and 124 and 125 Privileged)

[83] September 10, 2009, Minister Victor Boudreau of Business New Brunswick wrote to Purdy Crawford thanking him for agreeing to be part of the Advisory Board to the Atcon Group of companies. Exhibit 82

[84] September 15, 2009, the Minister of Business New Brunswick confirmed by letter to the Bank of Nova Scotia and Atcon that the Bank of Nova Scotia would have 100% first security over the Brun-Way highway maintenance contract and Atcon's plywood mill in Sweden in respect to any amounts outstanding on the credit line in excess of \$28.5 million and that, between \$10 million and \$28.5 million, Bank of Nova Scotia and Province of New Brunswick would each be entitled to 50% of the net proceeds of realization on the security and that at such time that the credit line is reduced to \$10 million, priority over the security would revert to the province. Exhibit 87

[85] September 22, 2009, a forbearance agreement between Atcon Holdings Inc., Bank of Nova Scotia and the Province was signed. Exhibit 96. On the same date, the Minister of Business New Brunswick issued a letter to the Bank of Nova Scotia agreeing to the advance of another \$3 million to Atcon Holdings. Exhibit 90

[86] October 31, 2009, an Interim Supplemental Priorities Agreement between Atcon, the Bank of Nova Scotia and the province was drafted. Exhibit 108

[87] November 5, 2009, Cabinet met to deal with the indemnification of the Directors of the Advisory Board of the Atcon Group of companies. Premier Graham was not present during this meeting. Exhibits 116 (and 126 Privileged)

[88] On the same date, Terms of Engagement Governing the Appointment of Ross Landers as Chief Restructuring Officer of Atcon was issued. Exhibit 105

PREMIER GRAHAM'S SUPPORT FOR ATCON

[89] When Premier Graham and his government took over the reins of power on September 18, 2006, they were confronted with many challenges and our country was on the cusp of a worldwide recession. As the economy of the province soured the government of the day changed its prime recovery strategy from job creation to job retention. In the Premier's testimony at the inquiry he referred repeatedly to the job retention strategy of the government during the hectic days of his term of office.

[90] At no time did I find that the Premier was disingenuous or lacking in frankness in his testimony.

[91] He couched his own support for the Atcon guarantees in a revealing lifting of the inner veil of how the Executive Council works. The Premier presides over the meetings. There is no vote taken when support for the item on the agenda is to be approved or rejected. Approval or disapproval is done by "consensus." A consensus is a collective view of a majority opinion, that is, a general agreement of opinion on a subject. No vote is registered as to who was in favour and who was not. No individual tally of the ministers' views is recorded. The ministers speak freely. No minutes are taken. No notes are preserved.

[92] The nucleus of support for the financial assistance in question for the Atcon Group came from the Miramichi area ministers and from the Premier.

[93] Various Executive Councils had dealt with Atcon requests for assistance on numerous occasions. The Atcon companies were far from strangers to a series of Executive Councils over the years. Their record of multiple trips to the Executive Council was well documented. Closer attention to the record, even passing attention to the record, would have raised a red flag. Any red flag, it seems, simply disappeared among the field of flags being ignored in pursuit of the mantra "job retention" good or bad, right or wrong, and at any cost. Premier Graham admitted that he knew and his government knew Atcon's history and that financial assistance to Atcon was "high-risk."

[94] The highs and lows of New Brunswick's record with the Atcon companies, from the companies 'entrepreneurial pinnacles' to the abyss of bankruptcy are documented elsewhere in this report to the Legislative Assembly. Consequently, I will not repeat the litany here but will begin in 2008 when Atcon sought financial aid for its fabrication plant. It needed millions in order to be able to bid on the construction of a bridge in the Northwest Territories called the Deh Cho Bridge. The steel plant in the Miramichi was essential to fabricate steel units in the construction of the bridge. Having received a

guarantee of funding for the plant, Atcon now needed a further guarantee to secure the bridge contract. The Deh Cho Bridge Corporation Ltd. wanted a performance bond of \$65,000,000 but would accept a letter of credit from a bank for \$13,362,845 being 10% of the contract price. Without the performance bond or the letter of credit Atcon would not be able to proceed with the contract. Typically, the province was unaware of this preliminary condition until the last minute. Without this guarantee for the letter of credit the bridge contract was dead. The Executive Council capitulated and the crack in the Atcon foundation began to spread.

[95] In early 2009 Atcon again came knocking on the door, this time for \$50,000,000. The Atcon companies needed (1) \$10,000,000 to finish the steel plant, a plant that was supposed to be built for \$11,000,000 but already cost \$9,200,000; (2) \$20,000,000 to pay out a high interest charging company, McKenna Gale (MG Stratum Fund III) at 18% to 20%; and (3) \$20,000,000 operating capital on a revolving line of credit. There was a delay because the Bank of Nova Scotia refused to accept the guarantee on a “revolving” line of credit and insisted upon a fixed sum of \$20,000,000 which meant that the province was exposed to the entire \$20,000,000 instead of the amount drawn down from the loan.

[96] In order to lessen the eyes-wide-open “high risk” certain conditions were put on the guarantees with failing results:

- a) Personal guarantee from Robert Tozer except for his principal residence; this was changed so there was no personal liability (approved by Board of Management April 2, 2008 and by Cabinet April 3, 2008) on the \$13 million guarantee.
- b) Corporate guarantees; the companies went bankrupt;
- c) Creation of an advisory board; The board gave up;
- d) Security on Vänerply, Atcon’s Swedish company in which the Premier’s father was a director, and security in the Brun-Way Highway maintenance contract; the province recovers nothing;
- e) Arrange for a review of the company’s assets;
- f) Advisory board to review any contracts in excess of \$5,000,000;
- g) Sell or monetize the Brun-Way contract by September 30, 2009; no recovery;
- h) Sell or monetize Vänerply by July 31, 2010; no recovery;
- i) Not to bid on provincial construction contracts if another New Brunswick company is bidding, including sub-contracts;

- j) Provide the minister with a plan resolving the (millions of dollars) in outstanding payables; buried in debt.

[97] With this background I move now to consider the alleged breach under the *Members' Conflict of Interest Act*:

Conflict of interest

4 A member shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is the opportunity to further the member's private interest or to further another person's private interest.

[98] The question to be answered is: By presiding over the Executive Council did the Premier participate in making decisions with respect to guarantees for financial assistance to the Atcon Group of companies?

[99] If so, did the Premier know or should he reasonably have known that in participating in the making of the decisions with respect to financial assistance to the Atcon Group of companies that there was the opportunity to further the private interest of another person, to wit his father, a director and paid consultant?

[100] The evidence is clear that the Premier, in presiding over the Executive Council while the Atcon guarantees for financial assistance of \$50,000,000 were being decided upon, was in fact participating in making decisions in the execution of his office. In his written reply to the allegation of conflict of interest, the Premier does not respond to the implication that he presided over the meetings of the Executive Council in which the guarantees for Atcon were granted, varied or otherwise decided upon.

[101] The Premier testified that if he was present, he presided. In Exhibit 116, the attendance records show that he was present when financial assistance was decided upon in relation to Atcon on April 3, 2008; May 1, 2008; March 26, 2009; April 23, 2009; June 4, 2009; August 13, 2009; September 2, 2009; September 11, 2009 (unknown); November 5, 2009 (absent).

[102] The Premier was unequivocal in his testimony that he supported the financial assistance to Atcon.

[103] The Premier testified that the policy shift from job creation to job retention forced upon the province by the recession drove his overriding strategy to help employment in

the Miramichi. I have no doubt of the accuracy of his testimony in this regard except that fiscal management of the province also seemed to be at play.

[104] At the same time, the government was involved in negotiations with the Province of Quebec on the proposed sale of NB Power's generation assets to Hydro-Québec. The intended sale was announced on October 29th, 2009 by Premier Graham and Quebec Premier Jean Charest.

[105] Premier Graham testified about the negotiations as follows:

...what I can say today is you can see how preoccupied my time was on so many other different files...

Q. Oh, I understand.

A....versus just dealing with this file on a day-to-day basis. I can't exactly recall the exact date when Cabinet was informed of the decision. It is all public knowledge to what I've said here today. It's been public knowledge before. It was at the peak of the recession when the Prime Minister called all parties to Ottawa...all Premiers to Ottawa to put forward a strategy to help Canadians continue to work and maintain their level of employment. It was at that meeting in Ottawa where I approached Premier Charest and said there's an opportunity for us to, to look at...to look at a potential sale of the asset of NB Power to Hydro Quebec. And I'm just remembering now if it was the meeting at the Delta or sorry at the...there was two meeting [s] at Ottawa so Premier Charest and I met in Ottawa for the first time. Premier Charest had just finished securing a large majority government in Quebec. Prior to that, he was preoccupied of, of governing a minority government situation. And we looked at an opportunity where we could share the risk of generation between our two assets and help deal with the skyrocketing challenges of electricity and new investments that NB Power was going to have to make going forward and the refurbishment of the Mactaquac [dam] and also the [Coleson] Cove generating station. So preliminary discussions were held and I think it was three or four months later when there was an actual indication from the Office of the Premier in Quebec that they were seriously considering what was...what I had initially raised with the (sic) him that discussions commenced. It was only when we could look at determining some form of a framework that that information was brought to Cabinet with the framework that was in place. And I forget the exact date but, we did not want to, to begin the process of informing Cabinet until the Minister responsible had a framework in

place and that's when the Minister brought forward a potential framework.

Transcript May 26, 2011
[Pages 1724-1726]:

[106] With the province's financial assistance the Atcon Group of companies continued to function as events overtook them.

[107] The evidence establishes that the Premier did participate in decisions at the Executive Council level in the execution of his office as claimed but does not establish that his own private interests were furthered.

[108] The question remains as to whether the evidence establishes that the Premier reasonably should have known that the decisions in which he participated at the Executive Council level in granting financial assistance to the Atcon Group of companies gave rise to an opportunity to further the private business and financial interests of his father, Alan Graham?

[109] The evidence establishes that Alan Graham, a long time successful and acclaimed New Brunswick politician had been a director of Vänerply AB, a company listed as one of the Atcon Group the principal companies of which eventually went into receivership. Robert Tozer was the virtual owner through another Swedish company called OPI Plywood AB. Alan Graham had been a director of Vänerply since early 2001 and had been the driving force in making the Swedish company successful. For the first few years, until the end of March 2006, Mr. Graham was paid his quarterly director's fees, \$3,750 by Vänerply.

[110] If Vänerply had continued to pay Alan Graham in 2006, the company would have had to withhold 25% more or less under Swedish laws because Mr. Graham was a non-resident. In order to circumvent this, Mr. Graham billed Atcon for his director's fees and then, as owner, Atcon recouped the sum by including it in management fees from Vänerply.

[111] Was Alan Graham still a director of Vänerply when the Premier as head of the Executive Council presided over meetings in March and April 2009 that approved financial aid to the Atcon Group of companies? By his own admission Alan Graham was a director of Vänerply from 2001 and at least until May 15, 2009. On that latter date he testified that he delivered a letter of resignation to Robert Tozer at the Atcon offices at Miramichi. This was confirmed by Mr. Tozer in his testimony. A copy of the letter was admitted as Exhibit 42.

[112] The matter of the resignation is surrounded by peculiar circumstances. According to Mr. Graham he never notified anyone at Vänerply that he had given his resignation to Mr. Tozer. Mr. Tozer testified that he never advised anyone at Vänerply that Mr. Graham had resigned. It was only much later on February 25 and again on March 11, 2010, after the issue was raised politically that Mr. Graham informed Leo Persson, managing director of Vänerply in Sweden about his resignation. Mr. Persson advised that one remains a director until a formal document is filed in the proper government office in Sweden. In any event, Alan Graham was still invoicing Atcon for thousands of dollars in director's and other fees up to and including December 31, 2009, seven and one-half months after the letter of resignation dated May 15, 2009. In an e-mail to Vänerply on January 12, 2010 Exhibit Book, Part 2, Cindy Cassidy, secretary to Mr. Tozer, writes "As per Robbie Tozer, please pay the attached two invoices for Alan Graham." Later on in 2010 Mr. Graham withdrew his two December 31, 2009, invoices.

Exhibit 157, Exhibit 158

[113] In addition to his Vänerply director's fees, Mr. Graham would also bill the Atcon companies a retainer of \$200 per week as well as for any additional work he did for any of the Atcon related companies, over and above the retainer.

Exhibit 151

[114] It is clear that without the financial assistance of the Province of New Brunswick through Executive Council support, the Atcon Group of companies would have collapsed as it eventually did, the signs of serious trouble having appeared during the 2008 applications for assistance when Alan Graham was on the board of directors of Vänerply and on retainer with Atcon. With the province's financial backing in 2009 the Atcon projects could proceed, tenuous though their life longevities might be; employment continued.

[115] On March 26, 2009, the Cabinet approved a \$10,000,000 guarantee to complete a building at Miramichi, a \$20,000,000 guarantee for working capital and a \$20,000,000 guarantee to pay off a high interest rate debt to McKenna Gale. According to Premier Graham the Atcon companies actually got access to the money in July, 2009.

[116] In the meantime the opposition was raising questions in the Legislature about the guarantees totaling \$50,000,000. Eventually the opposition raised the issue of the Premier's father being a paid director and consultant.

[117] Alan Graham testified that he was being asked by various workers and creditors of Atcon to help them get paid because they knew he was connected with Atcon. The number of complaints from unpaid creditors took their toll. Believing that his reputation

was at stake, Alan Graham resigned by letter dated May 15, 2009 delivered personally to Mr. Tozer at Miramichi, Exhibit 42. Mr. Tozer confirmed this but did not respond with a letter of acceptance nor a reply. The copy of the letter of resignation entered as Exhibit 42 in this inquiry came to the inquiry through the Premier's Office.

[118] Given Premier Graham's commitment to job retention, I find that the guarantees for the \$50,000,000 in financial aid were approved by consensus of the Executive Council and that Premier Graham chaired the meetings. As the Premier explained, the Miramichi region was depressed, needed stimulation, businesses were closing, jobs were at a premium, Atcon was a major employer and he viewed Business New Brunswick and the Executive Council as the financial refuge of last resort. He knew and the government knew that Atcon was a high risk client.

[119] Perhaps the guarantees were going to happen with or without the guiding hand of the Premier. It would appear, however, that Alan Graham's position as a director of Vänerply played only an incidental role in the outcome as to whether the guarantees were going to be approved. Alan Graham's Vänerply role vis-à-vis the Premier was subsumed in the big picture, the loss of jobs to the Miramichi even though many Atcon jobs were in Alberta. This, however, does not address Alan Graham's role as a consultant and on retainer to Atcon.

INDEPENDENT BOARD: PURDY CRAWFORD

EXTERNAL ADVISORY BOARD

[120] During the spring, summer and early fall of 2009 the fortunes of the Atcon Group showed increased signs of disturbing proportions. Relations with clients on the western jobs were rapidly deteriorating, the Bank of Nova Scotia was increasing the pressure, and creditors were not being paid. Without a dramatic intervention collapse appeared to be imminent. Two desperate efforts were made to save the Atcon Group. First, the accounting firm of Ernst & Young Inc. was called in to go over Atcon's books and to report to the Bank of Nova Scotia.

[121] On August 4, 2009 Ernst & Young Inc., examined Atcon's books and reported to the Bank that in their opinion the number of potentially non-compliant items from Atcon's books as of June 6th, 2009 amounted to \$18.6 million which, they said, may or may not have been properly treated by management in calculating the 2009 June borrowing base. Management disagreed with Ernst & Young Inc. and said no adjustment was necessary.

[122] The Executive Summary of Ernst & Young's report of August 4, 2009, Exhibit 71 is as follows:

As at 6 June 2009, Atcon had a \$40.0 million operating credit, a borrowing base of \$26.2 million, a total operating credit use of \$39.4 million and a borrowing base deficiency of \$13.2 million. A copy of the June Borrowing Base is attached as Appendix 1. Errors, and potentially non-compliant items which may affect the accuracy of this borrowing base, are shown at Exhibit A. We have discussed these matters with Mr. Robert Tozer, President, Mr. Mark Ledwell, Vice President and Legal Counsel and Ms. Katrina Donovan, Vice President Finance and CFO (collectively hereinafter referred to as “Management”). A brief summary follows:

- Errors – In the course of our review we have identified errors such as duplicate accounts receivable accruals, duplicate inventory postings, under-reported HST, employee source deductions, and wage accruals, etc. (see Exhibit A). We have reviewed these errors with Management who concur with EYI’s assessment. The correction of these errors has the cumulative effect of reducing the June Borrowing Base from \$26.2 million to \$23.5 million, a reduction of approximately \$2.8 million or 10%.
- Potentially Non-Compliant Items – EYI has identified certain items listed in Exhibit A which potentially should not have been included in the June Borrowing Base because their inclusion may not be compliant with the strict terms of Atcon’s credit agreement with the Bank. Management believes these items are compliant and consistent with their historical borrowing base reporting practices. A brief description of larger items follows:
 1. \$10.7 million of accounts receivables – at issue with these accounts receivable is the interpretation of the definition of the 90-day eligibility period for borrowing base inclusion. The inclusion of these items had the effect of increasing the June Borrowing Base by \$8.0 million.
 2. \$3.2 million of accounts receivable accruals – at issue with these items is the determination of when project WIP is properly converted into a *bona fide* account receivable and therefore eligible for inclusion in the borrowing base calculation. The inclusion of these items had the effect of increasing the June Borrowing Base by \$2.4 million.

3. \$8.2 million of action, suits or proceedings – at issue with these items is that they may have priority over the Bank's security, they were not reported in the June Borrowing Base and they may or may not have a direct correlation to Eligible Receivables included in the June Borrowing Base (e.g., the item may relate to a > 90-day or a disqualified account).

Although we have not concluded it is appropriate to deduct these items from the June Borrowing Base, we have included them at Exhibit A for the Bank's consideration.

[123] John Watt of Business New Brunswick testified with respect to Exhibit 71 beginning at page 713 of the transcript:

Q. I'd like to refer you to Exhibit 71. Now if I might just lead you a little bit, Mr. Watt, Exhibit 71 was the study done by Ernst & Young, commissioned by the Bank of Nova Scotia to look at the...as I understand it, the borrowing base calculation for Atcon as at a specific date...I believe it was June...June 6th. In other words, they wanted At...they wanted E&Y to go in and determine whether or not there was sufficient items there to justify the operating line of the \$40 million. And they prepared this report dated August the 4th, and there's an executive summary at page 2. Can you just sort of in your own words tell us what they found?

A. They found what, in their opinion, were a number of errors in the reporting by the company where they were in fact including receivables that should not have been in the receivable list and should have been in the work in progress list. They had a question on the dating of some of the receivables as to whether or not they should have been included in the receivable list. And they're claiming that the company was under-reporting statutory debts such as HST, employee source deductions, all of which would come off the borrowing base. So effectively, what they were saying is the company was misleading them on what was available for the bank to lend against. Without getting into specific numbers...

Q. Okay.

A....they're basically claiming that the company was misleading the bank.

THE COMMISSIONER: Was this intentional or is it just negligence, sloppy bookkeeping?

MR. WATT: I...I don't know the answer to the question. It certainly should not have happened. I mean Katrina Donovan was a chartered accountant. She came out of one of the big

accounting firms. She should have...this should not have happened. Ultimately, it was her responsibility, so she...she was signing the statutory declarations to the bank every month saying that the information was correct.

THE COMMISSIONER: In your view, were these serious omissions on...

MR. WATT: Oh, very...very serious.

THE COMMISSIONER: Yeah. Okay.

MR. WATT: These are...these are multi-million dollar errors.

THE COMMISSIONER: Yes. Thank you.

Q. Could you refer to the last page in the narrative prior to the appendix? I can't see whether...I guess it's page 11. Yes. It's hard to read, but...the first paragraph of the summary, "Our review to date clearly shows the company has a serious working capital shortage and requires a significant equity injection or other arrangement to provide the company with sufficient working capital to satisfy its existing liabilities, etc." Would you agree with that statement?

A. Oh, absolutely.

Q. Yes. And I think you've already said that. The next paragraph, "We have identified in this report errors totalling \$2.8 million which have the cumulative effect of reducing June borrowing base by 10 per cent. We have also identified a number of potentially non-compliant items totalling 18.6 million, which may or may not have been properly treated by management in calculating the June borrowing base." What's the effect of...of that? What was the effect of that? As the account executive, that 18.6 million non-compliant items, what...how would you react and treat that?

A. At this point in time, management...company management did not agree with Ernst & Young that these were non-compliant. The company argued that no adjustment was necessary. So you have basically a difference of opinion with a CA that works for the company and an outside consulting firm that's working for the bank. The bank's accountants are going to take the most cautious approach they can and the company's going to take the most liberal approach they can. That's...you see that every day. What the recommendations were, that the bank should go back in and look at every one of these and determine whether or not an adjustment was necessary in the accounting records. I'd have to look at the exhibits to see what the non-compliant items were.

Q. I'm not sure that it matters an awful lot because of subsequent events.

A. No, it doesn't. The fact is the company, in large part because of operating losses and the sudden shutdown of all the western business, ran out of cash.

Q. Um-hmm.

A. And as I mentioned before, any company with big overheads that you suddenly cut off the cash flow, the effects are devastating.

Transcript December 21, 2010

[Pages 713-717]

[124] With this dire background, the second desperate effort was made in September 2009 to bring in more professional help in the form of an external advisory board headed by Purdy Crawford a highly successful lawyer with a convincing record of being able to help troubled companies. The board consisted of other proven businessmen. The preliminary meeting to form an advisory board was held September 24 in Toronto.

[125] In the meantime, the Bank of Nova Scotia was demanding and getting the province to provide the bank with first priority over two profitable assets, Brun-Way and Vänerply AB. Brun-Way held a road maintenance contract for part of the Trans-Canada Highway and Vänerply AB of Sweden was an Atcon related plywood company owned by the Swedish company OPI Plywood AB controlled exclusively by Robert Tozer.

[126] The advisory board met regularly commencing in October 2009, but the continuing disputes over the Deh Cho Bridge job, the increasing creditors' claims, pressure by the bank, a lack of working capital, a failure to obtain replacement contracts and the downward global economy made the advisory board's job impossible. The financial wreckage was overwhelming, Purdy Crawford's efforts were futile, the Bank of Nova Scotia moved against Atcon and the advisory board never did present a final report. The board cost the province \$100,000.

[127] In his testimony Mr. Watt had this to say about the advisory committee beginning at page 839 of the transcript:

Q. Could you briefly outline the mandate of that committee?

A. It was a committee of essentially high powered businesspeople put together to try and bring some structure and direction to Atcon. It came out of the concern that Atcon was basically a one-man company and needed that kind of help.

Q. And you also discussed Ross Landers, and apparently he didn't stay very long?

A. No, he didn't.

Q. Why is that?

A. He couldn't get along with Robbie.

Q. So you were part of that advisory committee? Am I...

A. I was an observer.

Q. So the chair of the committee would have been?

A. Purdy Crawford.

Q. Okay. What were the findings of the committee at the end of it all?

A. The committee, over the time it was in place, did its best and tried to consider everything. At the end of it all, they came to the conclusion that the company was too far gone, couldn't be saved.

Q. When did they come to that conclusion, approximately, ball park?

A. I...I honestly don't know.

Q. Did you agree with those findings?

A. Yes.

Q. So as an observer, who played the key role in that...in that committee?

A. I'm not sure...I'm not sure there's an answer to it. I mean the board sat and discussed; Purdy Crawford was the chairman...they discussed all aspects of...all major aspects of the company. It was a roundtable. Different committee members spent various amounts of time at Atcon trying to get a handle on the company. Some of them were working directly with clients of Atcon's in the west, trying to settle receivables and that type of thing. But for the most part, it was general discussions on what the company should be doing, and it always dealt with problems. There were simply so many problems, you couldn't focus on changing the direction of the company, that type of thing.

Q. Were there any key findings or any key factors they considered in coming to their conclusion?

A. Money. Business out west was faded, it was failing, it was still failing very badly, and the company was not getting new contracts. Had these huge unpaid creditor bills and had seniority pushing...just reached the point where there was no way out.

Q. During your earlier testimony you mentioned that BNB did not support or recommend providing financial assistance.

A. Correct.

Q. What were the factors that BNB relied on or why did they come to that conclusion? Why did BNB not want to recommend providing financial assistance?

A. It had to do with the debt load of the company, the profitability of the company, the fact that it was a one-man operation and was far too big for its available cash flow. There were...there were a number of...basically all financial and management factors.

Q. Debt load, one-man operation, too big.

A. Too big for its capital base.

Transcript January 12, 2011

[Pages 839-842]

ALAN GRAHAM'S PERSPECTIVE

[128] Mr. Graham is a former Deputy Premier of the Province. Following eight elections and a lengthy and successful political career he went on to directorships in various private, national and provincial businesses while continuing with a number of local

businesses of his own in the Rexton, Kent County area. His son, Shawn, succeeded him when the seat became vacant. Currently Mr. Graham is a Commissioner with the Canadian Nuclear Safety Commission a federal government commission. In fact, during this inquiry Mr. Graham was acting as chairperson of a federal commission but made himself available between sessions of his commission.

[129] Mr. Graham testified that since his retirement from government and because of his expertise he has taken five bankrupt companies and restored them to success without government assistance. This expertise made him a valuable asset to Vänerply AB, the Atcon affiliated company in which he held a directorship.

[130] Vänerply AB is a company incorporated in Sweden owned by OPI AB, another Swedish company. OPI is owned outright by Robert Tozer who controls all the Atcon related companies.

[131] According to the evidence, Vänerply was bankrupt and was purchased by Mr. Tozer through OPI, Mr. Graham was called in by Mr. Tozer in 2000 or early 2001 to micro manage Vänerply back to success, which he did. Mr. Graham spent almost ten years as a director of Vänerply for \$15,000 per year plus a monthly retainer and \$250 per day for other work. Mr. Graham testified that the monthly retainer started out at \$2,000 but was reduced to \$800 and was charged to Vänerply and other Atcon companies. Control of which Atcon companies contributed to the retainer, other than Vänerply and Atcon Plywood (formerly Nelson), was left to Mr. Tozer. Mr. Graham testified that he helped Mr. Tozer on wood procurement for Nelson Plywood and helped him with Envirem, another Atcon company.

[132] Mr. Graham and Mr. Tozer had known each other for over 20 years. They were longtime friends with many mutual interests, having met when Mr. Graham was Minister of Natural Resources.

[133] Mr. Graham estimates that he got \$200,000 from his association with Mr. Tozer:

I got, oh, a couple hundred thousand dollars probably over
a period of ten years.

Transcript September 26, 2011
[Page 1989]

[134] The evidence establishes that Mr. Graham was a director of Vänerply AB and a consultant to the Atcon Group of companies during the critical years 2008 and 2009

when the Executive Council was under the chairmanship of his son, Shawn Graham. During Mr. Graham's tenure with the Atcon Group of companies there were two mysterious occurrences: 1. Was he a shareholder of OPI AB the Swedish company controlling Vänerply? 2. Did he resign as a director of Vänerply on May 15, 2009 as evidenced by his letter of that date? Exhibit 42

OPI MYSTERY

[135] The Receiver in Bankruptcy of the Atcon Group has no record of Alan Graham ever being a shareholder of OPI AB and Mr. Graham testified that he was surprised to find out that he was a shareholder.

[136] On May 17, 2011, when he was asked by counsel to the inquiry whether he was an officer, director or shareholder of OPI AB, he testified as follows:

Q. OPI AB?

A. I'm going to hesitate here. I never knew that I was on that board. Never signed the board minute or anything else. For the record, my under...my understanding, I was only on and always signed off on the minutes and so on of Vanerply Limited.

Q. Right.

A. It came to my attention after the receivership with the... receivership and the receivers that there was one share that had been in my name.

Q. In OPI?

A. In OPI, and I signed off on that a long time afterwards, but I never even knew...I had never been involved in a...in one board meeting, one...signed anything for OPI and I...and I didn't even know how that had happened, but it was required that I...that I sign off and there was one share in OPI that...and I signed it... signed it off and I have no idea whether it went to the receivers or what, but it was given to me signed.

Q. Okay.

A. So as I say, I say no, I'm not on that board, but to be perfectly clear, I don't...that share didn't necessarily put me on the board.

Q. Yeah.

A. But I did have a share of...a certificate with one share.

Transcript May 17, 2011
[Pages 1363-1364]

[137] On September 26, 2011 Mr. Graham was again questioned about the share in OPI AB that he said he signed for the Receiver, Ernst & Young:

Q. Now, who did you talk to at Ernst & Young?

A. Nobody. I, I talked to no one. The only... When it came to my attention -- and I, I thought I explained it in the initial... in the initial hearing there on, on May whenever was, 17th, or whatever it was -- that it only came to my attention when Robbie Tozer brought it and said he had a form, had something for me to sign and he would come to... he would come, come over and I said I would go part way and meet him and I met him in St. Margarets, and when I signed it I noticed it was a share in OPI. That was the first time I knew about it.

Q. Okay. Did you ever talk to anyone at Ernst & Young?

A. No, I didn't. The only person and the only contact I've had with regard to that piece of paper, which surprised me at the time, was, was Robbie Tozer when he brought it that day and I don't have a date on it, but it was, I know, after the receivership.

Q. The receivership is still going on.

A. Well, after they were put into receivership I meant to say.

Q. Did you ever talk to a fellow by the name of George Kinsman?

A. Not to my knowledge. I... The name doesn't ring a bell. Not to my knowledge.

Q. Did you ever talk to anyone by the name of Matt Harris? These are people at Ernst & Young.

A. Yeah, no, not to my... To be... To be honest with you, I have talked to people at Ernst & Young on other companies that, that had nothing to do with Atcon, but I... and I don't, don't recall anybody at Ernst & Young. I've never discussed anything with Ernst & Young to my knowledge with regard to anything to do with Atcon.

Q. Did you have any conversations with anyone Ernst & Young with respect to Vanerply?

A. Not to my knowledge, no.

Q. Okay. Now, let's move onto St. Margarets. We were informed by Mr. Whitehead, and you've confirmed what he said, was that you met Mr. Tozer at St. Margarets. Where is St. Margarets?

A. It's about halfway between Richibucto and Miramichi.

Q. And do you recall when that was?

A. Look, I, I tried to find... go through my records 'cause I try to keep track of everything, of everything I do with a diary and I couldn't find it, but I know it was in the summer.

Q. Summer of what year?

A. Well, I believe it would've been, what, we're in 2011, I believe it was last summer, 2010.

Q. Did you sign anything...

A. I'm not sure, but I believe that's when it would've been.

Q. Tell, tell me what you... what you remember signing.

A. It was a share certificate of which...asked me to sign the back of it, which I did. And it was a, a share certificate to my knowledge. When I looked at it it was a share for one share in OPI, and I had no idea that I'd ever even been part of that.

Q. Did you keep a copy?

A. No, we were both...we were in a car in front of the Roman Catholic church, I think it was, in St. Margarets.

Q. Do you recall discussing any other matters with Mr. Tozer?

A. No, not at all. I just said...I, I didn't realize that, that, that I had this and then I just said I'll sign it for you because I, I didn't realize I had anything to do with it.

Q. Let's back up a little bit. What happened prior to you going there? Did Mr. Tozer call you?

A. Yes, he...or, he...either he or his secretary, I'm not sure. I can't remember which, but someone called me and said that there was a...there was a form needed to be signed and would I, would I sign it. And I said, well, I have no problem with signing off anything, so.

Q. And, and did they describe what it was?

A. No, they didn't.

Q. Okay. So you went to St. Margarets really not knowing what you were going to sign?

A. Not knowing what I was signing. I thought it was probably something to do with Vanerply.

Q. Okay. Now, Mr. Tozer sent an email to you...

A. Yes.

Q....which I thank you for sending me a copy.

A. I apologize for taking so much time to do that but I, I couldn't get a hold of him, so. Okay, go ahead.

Q. I'm just trying to find it. Now, Mr. Tozer said on September the 20th you did not have anything to do with OPI in any way. You were only involved with Vanerply on the board. So why would he ask you to sign a share if you had nothing to...

A. No idea. And I don't know whether the...it...I, I, I have no idea. I read that the very same way and that's why I sent it to you because I, I had no idea that I had anything to do with OPI, unless I've made a mistake and it wasn't an OPI share but I am 99.9 percent that I'm...my, my memory and my, my viewing was correct.

Transcript September 26, 2011
[Pages 1935-1940]

[138] Why is the OPI share mystery of interest? John Watt, the Business New Brunswick financial expert, testified that he knew Alan Graham was a director of Vänerply. He found this out when he was reviewing the financial records of Atcon while the various guarantees were being considered by the Executive Council but this knowledge did not trigger in him a warning of a conflict of interest. I find this inexplicable. However, he

testified, if Alan Graham had been a shareholder, that would have signaled a red flag, a conflict of interest. Either one should have been a red flag that the Premier was facing a potential conflict of interest if the Premier's father had the opportunity of benefiting from Cabinet decisions chaired by the Premier. Surely an obligation to perform due diligence includes examining for conflicts of interest.

RESIGNATION MYSTERY: When a resignation is not a resignation!

[139] When Mr. Graham arrived back from his annual winter trip to Florida in 2009 he began putting his affairs in order. Atcon was very slow paying him and owed many people. He testified that his reputation was at stake. He testified that he tendered his resignation as a director of Vänerply AB to Robert Tozer at Miramichi on May 15, 2009. He continued to work as a consultant on retainer and do other work for Vänerply and the Atcon Group. He testified as follows about why he resigned as a director. At this time he did not explain why his continued employment as a consultant to Vänerply and Atcon did not also affect his reputation but his directorship would:

Q. Did you ever do any consulting work for her?

A. No, other than the fact...I'd like to just if I could deviate, Your Honour, just for a minute because it might save some time and maybe it won't, and if it won't, I respect that, but I didn't resign from Atcon because of loan guarantees that the government was making, which is a perception that a lot of people may think of. I resigned from Atcon because of my reputation, and I resigned from Atcon because things were going from bad to worse as far as money he owed everyone in the country. And I would get calls...a truck driver would say "I hauled potting soil to Ontario"...a friend of mine, and he'd say "Do you have any connection with Atcon to get my cheque they've owed me for two years?" "Have you"...I'd get a call from...talked to a farm machinery dealer and he'd say "You know, Robbie Tozer's got to pay his f-ing bills. He owes me \$10,000" and he said "I'm still charging to him because I'm a fellow on the Miramichi" and so on and so forth.

Q. I think we're going to get into this, Mr. Graham, in due course.

A. Yeah, but what I guess I want to say is Atcon owed me money, also, and they weren't paying, and I tendered my resignation because of my reputation.

Q. Okay.

A. Because I didn't...I wanted to be able to say to people "Look, I have nothing more to do with Atcon."

Q. Okay.

A. And it has nothing to do with regard to...with regard to the loan guarantees. So I just want you to understand, I would meet Katrina Donovan...When I went to Miramichi, a lot of the times

I would go with a list of people who had called me and say, "Look, this is a poor man. He's got truck payments to make and he hasn't been paid for hauling your topsoil two years ago." Or "This is a...this fellow hauled gravel for you on a road job and hasn't been paid and he's called me because he's...he's...he knows me and so on." So that was the reason, and that's what my meetings would be a lot of the times with Katrina Donovan and with Gordie Burns. Would say is, "When are you going to get...when are you going to pay these people? They've done their work, they've paid their HST on the bill, they've done all this and they haven't been paid." And that...Katrina is the financial person. That was...a lot of the times I would call her and see if that was done because I knew that Sweden was making money; I had no idea what was going on in...

Transcript May 17, 2010
[Pages 1379-1381]

[140] According to his evidence Mr. Graham's resignation from the board of directors of Vänerply was because his reputation was at stake, Atcon was not paying its creditors and he was being approached by various creditors to intercede and perhaps felt criticized by way of association. The puzzling aspect of this testimony is that Mr. Graham remained on the Atcon payroll as a consultant in the entire year 2009 and continued to advise Vänerply and Atcon personnel well into 2010. There was no public announcement of his resignation as a director of Vänerply. In fact neither Mr. Tozer nor Mr. Graham notified Vänerply personnel in Sweden of the resignation. Vänerply continued to send daily reports to Mr. Graham and he acted upon them. It was not until February 25, 2010, that Mr. Graham notified the head office in Vänerply that he had resigned from the board on May 15, 2009:

For your information I have resigned from the board at Vanerply on May 15th, 2009.

[141] Mr. Graham testified that he found out in this flurry of overseas e-mails with Vänerply in February 2010 that Swedish law requires a resignation from the board of directors to be filed with its registry office for corporations. The failure to notify Vänerply of the resignation brought the immediate notification that there had not been any compliance with Swedish laws. Legally, he was still a director.

[142] It was not until February 25, 2010, that Vänerply was notified of the May 15, 2009, Graham letter purporting to resign as a director and it was not until the spring of 2010 that the issue of a conflict was raised in the Legislature by the opposition of the day. The only thing that changed was that Mr. Graham was no longer receiving his quarterly

payments as a director but was still on retainer. There was no written acknowledgement of the resignation.

[143] With respect to his income other than the quarterly payments for director's fees, Mr. Graham testified that his original retainer was \$2,000 per month. The retainer fee was changed in 2002 and became \$800 per month until December 31, 2008, when it changed to \$100 per week from Nelson (Atcon Plywood) and \$100 per week from Vänerply.

[144] When he was asked why he charged a retainer fee for the balance of May after his resignation dated May 15, 2009, he testified that the retainer fee had nothing to do with the director's fees. He billed Atcon Management for his director's fees and the Atcon Group for his retainers.

[145] Then, something very strange happened which Mr. Graham testified was an error. He sent out two invoices to the end of 2009, more than six months after having resigned as a director. Both are dated the same date, the 31st of December, and are the equivalent of the \$3,750 director's quarterly fees except that they are for work as an advisor. In any event, Mr. Graham explained that they were sent out by his wife in error although he assumes full responsibility for the error.

[146] He testified that on February 24, 2010, he sent an e-mail to Lisa Godin the account manager at Atcon cancelling the two invoices because he did not think that Atcon...

could afford that type of money at this time and that I had thought that I had earned enough money from them and to, to help them through this difficult time.

Transcript September 26, 2011

[Page 1949]

[147] Clearly, Mr. Graham felt entitled to the money for the work done and intended to be paid. In 2010, before the cancellation e-mail to Ms. Godin by Mr. Graham, the two invoices for the last two quarters of 2009 had been approved, as initialed in the lower right-hand corner by Mr. Tozer, for direct payment by Vänerply in Sweden but were rejected by Vänerply because they were addressed to Atcon.

The letter of resignation

[148] The letter of resignation as a director of Vänerply addressed to Atcon to the attention of Robbie Tozer dated May 15th, 2009 is self-explanatory: Exhibit 42

ALAN R. GRAHAM

Atcon Management
624 Newcastle blvd. Miramichi N.B
E1V 2L3

Rexton N.B.
May 15, 2009

Attention Robbie Tozer

Dear Robbie

After much thought I wish to tender my resignation as a Director for Vanerply AB in Otterbecken Sweden. effective today May 15 2009. I do this with much reservation as you and I have seen much success in Sweden from 2002 when you had the vision to take ownership of a bankrupt company half way around the world and turn it into the largest plywood producer in Sweden[.]

The one hundred and fifty employees there have seen an uncertain future turned into a bright and secure employment opportunity producing the highest quality product in all of Europe. Your leadership in turning this company into a real success story makes me proud to have been part of the team that has made it possible. As the financial statements for 2008/09 are not yet completed I will still sign off on them when they are completed by our Swedish auditors.

Again thank you for including me in this company's success and I wish to continue our close friendship with you and your family[.]

Sincerely,

Alan R. Graham

[149] There were various explanations given as to why Mr. Graham resigned from Vänerply. He testified that it was because Atcon was not paying its creditors and he was being approached by unpaid creditors because of his association with Atcon. It was a matter of his reputation. He also was critical of the long delay in getting his own accounts paid and testified that his resignation had nothing to do with the loan guarantees:

I resigned from Atcon because of my reputation, and I resigned from Atcon because things were going from bad to worse as far as money he [Robert Tozer] owed everyone in the country.

Transcript May 17, 2011

[Page 1379]

[150] There was another rather critical admission which came about in an e-mail to Leo Persson in Sweden, deputy member of the board and managing director of Vänérply AB, Exhibit 147:

Ämne: Re: Information
Från : Alan & Connie Graham "<grahamexport@gmail.com>
Datum: Wed, 3 Mar 2010 12:36:21 – 0400
Till: Leo Persson <leo.persson@vanerply.se>

Leo

Since I gave notice to Robbie of my resignation on May 15th 2009 can you also inform the Swedish Patent and Registration Office (PRV) That I am officially not a director The main reason for this resignation is there is a conflict of my association with the Atcon Group here in Canada and I do not want it to become public that I am associated with Atcon Please send me your phone number so we can talk directly and be assured I will help you in anyway I have great pride in what Vanerply has accomplished in the years we have worked together As a friend I am available to talk at any time

Alan

[151] Mr. Graham's explanation of this e-mail referring to a conflict of interest was partly as follows:

Q. Is that statement true?

A. Certainly. Certainly it was. After it came out in the Legislature and I was slammed all over the thing and had no way of defending myself, I lived as a private citizen for some 11 years afterwards and got accused of things. And people hide behind the Legislative process and be able to make statements and I had no way of defending myself unless I hired lawyers and so on, I, I was very concerned about that. But as I had said at the outset, that was not the reason why I resigned from Atcon in the first place, which was because they owed they owed so much money. But when it came to this I was very concerned because this was coming out in the Legislature and I was, yeah, almost every day it was...I was in the press and I didn't appreciate that because over my 31 years as a...as a politician and eight...and eight elections I always tried to maintain a — oh, I've got your papers — I always tried to maintain a bit of ethics and I think the history would show that that I did. I also tried to raise my family the same way. I would attack a political party in the Legislature

and tear strips off them, but I always believe you don't attack a person. You don't get personal and I practiced that all of my life and I wanted to do that again.

Transcript May 17, 2011
[Pages 1429-1430]

[152] Mr. Graham was concerned that he was being targeted as having a conflict of interest and he wanted to refute any such implication. Recall that this e-mail to the managing director, Mr. Persson, in Sweden in February 2010 was well after his written resignation dated May 15, 2009, which, in turn, was well after the Order in Council in March 2009 authorizing the \$50 million to Atcon. I attempted to clarify the "conflict" issue with Mr. Graham.

THE COMMISSIONER:...what did you mean by the conflict?

A. Well, I, I was so upset and my wife was so upset and her family were. And even my other kids, my daughter was calling saying, you know, "Look, Dad, you're in the paper again. What's going on?" and so on and so forth that I was just so upset that I wanted to make sure that there was no conflict. And I did put the word "conflict" in there because...but it was what I was reading in the press and what was going on every day that was concerning me. It wasn't the matter of, look, I'm a big boy and if I did something I'll, I'll accept the consequences, but I...when you get mis-truths...I was being accused of a conflict that wasn't there, and I was referring to that conflict that I was being accused of.

Transcript May 17, 2011
[Page 1479]

[153] Mr. Graham was quite specific about his efforts to distance himself from anything political, particularly because of his long-standing association with the federal government nuclear commission on which he was and has been commissioner for a number of years. This was important to him. He wrote letters of resignation to his former political party organizations and stayed away from provincial politics. He was of the opinion that he would be seen as politically advising his son if he did not dissociate himself from all contact with the Premier except for festive occasions. Because of differences of opinion on provincial matters, Mr. Graham also decided that he would avoid talking to his son on matters controversial or otherwise.

[154] For example when a matter arose between Atcon's right to bid on construction work in New Brunswick in competition with the Road Builders Association of New

Brunswick Inc. he advised his son Andrew, then the incoming president of the Association:

He was...In that year that Atcon got the loan he was the incoming president and he called me on a couple of occasions and said, "What do I do, Dad?" And I said, "Look, if you want to talk to your brother about whether he should or shouldn't, that's up to you, but I'm not touching it. I am not advising Shawn on anything political whatsoever."

Transcript May 17, 2011

[Page 1434]

[155] The March 26, 2009 Order in Council disqualifies Atcon from getting road jobs within the province if any other New Brunswick company bids on the job. This prohibition is also referred to in a Business New Brunswick e-mail dated March 6, 2009.

[156] In 2008 Mr. Graham certified to the Government of Canada that he would observe the Ethical Guidelines for Public Office Holders and Guidelines for the Political Activities of Public Office Holders. This certificate, Exhibit 154, was a condition of holding office federally.

[157] Without the New Brunswick government's financial assistance, the Atcon companies could not succeed. Behind the scenes the house of cards was already trembling. Despite other desperate measures by the Executive Council and many other well intentioned efforts, the Atcon empire was, inexorably, on the verge of collapse, leaving an unemployment crater on the landscape of the Miramichi.

[158] Alan Graham testified that he had nothing to do with the guarantees or any advice to Atcon about them. He said he learned about the guarantees from the press. He testified:

A. No, I'm getting into fact and the fact is -- and I want it understood and I'm on the record under oath -- that I never discussed the Atcon loan with Shawn Graham or any other type of government activities with Shawn Graham...

Transcript May 17, 2011

[Pages 1438-1439]

[159] Mr. Graham's instinct was quite accurate when he zeroed in on the issue of a "conflict." Nothing that he did, in context, pointed to a conflict initially caused by him. However, with all his political experience and savvy it is astonishing that, when he learned of the guarantees, he did not see that although he originally was the faultless participant in a conflict of interest he was also the legitimate object of it; decisions had been made at the Executive Council level that gave rise to the opportunity of furthering

his private interest. As a former member of the Executive Council he seems not to have recognized that financial assistance to the companies from whom he obtained engagement as a director and consultant would benefit him and put his son in a potential conflict of interest if not actual conflict once the applications for guarantees were approved. He made no attempt to discuss with his son that his position as a director and paid consultant to the borrower might pose a problem to his son.

THE PROBLEM

[160] What evidence connects the Premier to his father's association with Robert Tozer, Atcon and Vänerply? Should he reasonably have known that in participating in making the decision to provide financial assistance to the Atcon Group of companies that there was the opportunity to further his father's private interest?

[161] The Atcon Group had to have financial assistance from the province in order to further its interests, even its survival. Alan Graham was a director of Vänerply and a paid consultant to Atcon. The continued operation of the Atcon companies meant that Alan Graham's position and income, a private interest, would also continue.

4 A member shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is the opportunity to further the member's private interest or to further another person's private interest. [Emphasis added]

THE CONNECTIVE TISSUE – References to Vänerply

[162] 1. The July 22, 2010 written unsworn response of Premier Graham to the April 7, 2010 affidavit of MLA Claude Williams admits:

Alan Graham was a Director of Vanerply AB for approximately nine or ten years resigning in May 2009. He was never a shareholder. I had no knowledge of my father's responsibilities or his remuneration. Alan Graham has not otherwise been a Director or Shareholder of Atcon Group during any period since I have been Premier of the Province of New Brunswick.

[Underlining in original]

[163] 2. Premier Graham testified that he had known Robbie Tozer since the early 2000's; that his brother, Andrew Graham, worked for Mr. Tozer's company for a number of years; that his father, Alan Graham, worked for Mr. Tozer following Alan Graham's retirement from public office in 1998; that his father worked for a number of years in the plywood mill in Sweden because he recalled that his father

would be out of the country on numerous occasions travelling abroad. (Transcript A, pp. 1493-1494 Exhibit Book, Part 2).

[164] 3. Premier Graham testified that when his father retired he replaced him as MLA and that his father was a director of Vänerply in Sweden, a veneer plywood company owned by Robbie Tozer, the owner of the Atcon Group but had no knowledge of his father's remuneration. (Transcript B, pp. 1527-1529 Exhibit Book, Part 2).

[165] 4. Premier Graham testified that his father had known Robbie Tozer for a number of years as a friend when his father was Minister of Natural Resources. Mr. Tozer bought the old Burchill mill and that is where the acquaintanceship started. (Transcript C, 1534-1535 Exhibit Book, Part 2)

[166] 5. With respect to his father being a director of Vänerply the Premier testified:

A. There was no potential conflict that I was aware of, so there was no thought given to it.

Q. When you were Premier and, and by 2008 and 2009 what was your knowledge as to whether he remained a director?

A. I knew that he was no longer travelling to Sweden so I, I thought that he was no longer involved with the Atcon Group.

Transcript May 25, 2011
[Pages 1533-1534]

[167] 6. Premier Graham made a false assumption that his father was no longer involved with Vänerply whereas Alan Graham presumed that his son did know. He testified as follows:

Q. Okay. We'll come back to that. Was your son, Shawn Graham, aware of your association with Vanerply?

A. I would presume so because I'd been involved with Vanerply for almost 10 years and he would have...when we first...when Vanerply was first purchased, I spent...I think I did six trips to Sweden in six months,...

...And yes, I mean even before he was...when he was just an MLA, he was aware that his father would be in Sweden once in a while, so he knew that that was going on. Yes.

Transcript May 17, 2011
[Page 1368]

[168] 7. The Premier testified that he had no concerns about being the chair of the Cabinet meetings dealing with Atcon. He testified that he

had very limited knowledge that my father had involved...been involved with the Atcon Group. I knew that earlier following his retirement he was involved in Sweden, but I felt that the Sweden operation, that it had no impact here in New Brunswick with New Brunswick operation. We never discussed any of the work here in New Brunswick. I knew that the opposition may actually try to raise the issue of my brother, who had worked for the Atcon Group for a number of years but had left after having, I guess, concerns over remuneration.

Transcript May 25, 2011

[Page 1542]

- [169] 8. Premier Graham testified that he chaired the meetings of the Executive Council dealing with the Atcon financial aid and when he was asked whether any civil servant or other person associated with Cabinet suggested he step aside, he testified as follows when questioned by his counsel Allison Whitehead, Q.C.:

A. It was never raised.

Q. What benefit or opportunity did you believe the granting of these loan guarantees relating to Tozer and his companies in 2008 and 2009 bestowed upon your father?

A. None whatsoever.

Q. And again, what knowledge do you now have of remuneration to Mr. Graham, to Alan?

A. I have no knowledge of the remuneration that's being received or was received.

Transcript May 25, 2011

[Page 1543]

- [170] 9. With respect to the allegation that his participation in Cabinet on the decisions made for financial assistance to the Atcon Group gave an opportunity to further his father's private interest, the Premier said:

So when these decisions were made, I want to be very clear that never did I think that it would...to further the interests of a family member.

Transcript May 25, 2011

[Page 1549]

- [171] 10. The Premier testified that he was not aware that his father was getting paid by Atcon as a director and consultant up to and including the year 2010. With respect to not verifying whether his father was a director of Vänerply he testified:

Q. But you can understand the optics of this? It is possible to do a search and find out quite easily that your father was a director of Vanerply and when that search was done it, it, obviously, on its face appears to be a conflict.

A. Again, the, the alleged conflict that is before us today was raised, you know, in a political environment.

Q. Um-hmm.

A. We were getting ready to go into an election campaign, as you appreciate. But the decision was based solely on helping this company as a number of companies.

Transcript May 25, 2011

[Pages 1553-1554]

[172] 11. The Premier testified that [by choice] he never discussed business or politics at home:

Many of the decisions that were made, as evidenced by the MECs [Memorandums to Executive Council] and the decision of the Executive Council that we're going to look at, dealt with Vanerply directly in that a major condition was that you, to use the words of the MECs, "monetize..."

A. Um-hmm.

Q. "...the Swedish interests." That you monetize Brunway, that this money was to come back in. And given that there was so much involvement of Vanerply in the decisions to help Atcon did you not feel there was a conflict of interest?

A. Well, as I said, we never discussed politics or business at home...

Q. Right.

A....when I was home. So I was never under any impression that my father was still involved with Vanerply. I want to be very clear that the decision of government to monetize these, we were trying to minimize the risk...

Q. Mmm.

A....for the rate pay...for the taxpayers.

Transcript May 25, 2011

[Pages 1555-1556]

[173] 12. Why did he not call his father and ask about being a director of Vänerply?

Q. Right. But given the high profile nature of your position and given the fact that you were promoting transparency in government, why would you not have called your father or sent him an e-mail and said, "Are you no longer involved with Vanerply? This could get embarrassing." Why, why didn't you do that?

A. And as a family we made a decision, you know, not to talk politics, not to, you know – and we tackled some pretty big

issues – and I wanted to respect that level...and I also had confidence in my father that he would take any appropriate decisions if there was any at any point in time. So, you know, I, I based these decisions on the information that I had and I want to be very clear that when it was raised in the Legislature we took immediate steps to find the answer to the question and that's when we were informed that he was no longer involved with Vanerply, that he had made the decision to step down so we felt that we'd answered that question appropriately.

Transcript May 25, 2011
[Pages 1558-1559]

- [174] 13. The presence of Vanerply as an Atcon asset was prominently before the Executive Council under the chairmanship of Premier Graham as early as April 3, 2008, when Atcon sought assistance to guarantee “the repayment of a loan” not to exceed \$13,362,845. This turned out to be a three-year guarantee for a letter of credit. Business New Brunswick recommended that Atcon not be permitted to make any further requests for financial assistance until the guarantee was released. (Exhibit 118, Privileged)

“VANERPLY” AT THE EXECUTIVE COUNCIL

[175] Atcon’s request for \$50 million in financial aid by the Atcon Group was pursued through 2009 and 2010.

- (1) March 13, 2009, the New Brunswick Industrial Development Board recommended that the Executive Council assist Atcon provided Atcon agree to ten conditions including the sale of Vanerply as follows: An undertaking to sell or otherwise monetize the Swedish assets as quickly as possible, but in no event later than July 31, 2010, with all proceeds being applied to the Minister’s guaranteed loans. The Minister is to be provided with monthly progress reports from the firm which has been engaged to sell the assets, and the company shall undertake not to reject any offer of \$18 million or more. Atcon was described as high risk.
- (2) March 26, 2009, the Executive Council dealt with Atcon’s \$50 million dollar request for financial assistance being \$10 million to complete a building, \$20 million to pay out McKenna Gale’s 18-20% high interest and \$20 million for operating capital. The Board of Management said that

assistance should include selling or otherwise monetizing Vänerply assets. Atcon was described in the Memorandum to Executive Council by Business New Brunswick as high risk which also stated:

- Atcon is a major employer in the area with an annual payroll of some \$70 million, and the company's employment efforts have gone unrecognized as most of the work is taking place in Alberta and northern Canada.
- 80 percent of Atcon's revenues are derived through Atcon Construction, a sector not normally supported by BNB. Provision of assistance to Atcon may result in requests from other construction companies.
- The vast majority of the construction revenues are generated outside of New Brunswick, using NB labour and generating wealth for New Brunswickers and tax revenues for NB.
- Inability of the company to access credit will limit the company's operations and could lead to a major downsizing of the company. The company's current \$40 million operating line of credit is fully extended. The company is already in the process of reducing its fixed overhead expenses.
- Atcon is confident that it can achieve its 2009 forecast of \$279 million in revenues and pre-tax profit of \$22 million. However, Atcon's profitability in recent years has been marginal. An independent review of the company's balance sheet assets to ensure that there are no hidden losses is recommended prior to providing assistance.
- Atcon has a dismal record of meeting its payment obligations to BNB.

- The recent acquisition (by lease) of a corporate jet will create a perception issue if assistance is provided.
 - The requested \$10 million to complete the Atcon Industrial Services project in Miramichi has been necessitated by a \$9 million cost over-run of an \$11 million project. This resulted from the company's decision to expand the scope (and cost) of the proposed project without the knowledge of BNB and without securing the required financing to fund the incremental work.
 - The requested \$20 million working capital guarantee relates primarily to requirements associated with construction activities (a sector not normally supported by Business New Brunswick).
 - The company continues to embark on projects beyond its financial capabilities and then seeks provincial support after the fact.
 - Accounts payable over 90 days old amounted to \$26 million in February, 2009. Ongoing supplier credit will be essential.
- (3) On April 23, 2009, the \$50 million dollar guarantee was again before the Executive Council chaired by Premier Graham to modify the \$20 million dollar operating loan on the Bank of Nova Scotia's insistence from revolving credit to a four year term loan, a benefit to Atcon but riskier for the province. Vänerply is again mentioned: "...sell or otherwise monetize the Swedish assets as quickly as possible...the Minister is to be provided with monthly progress reports from the firm which has been engaged to sell the assets..." Risk assessment: High.
- (4) June 4, 2009, the Executive Council under the chairmanship of Premier Graham dealt with an amendment concerning competition in the province between Atcon and other contractors. Again the sale of Vänerply was in the material to be dealt with by the Cabinet.

- (5) August 13, 2009, as Atcon's financial woes continued, the Executive Council under the chairmanship of Premier Graham approved a change so that \$2 million designated for capital projects be disbursed for working capital. On Schedule "E", Vänerply is prominently shown on the first line of Atcon Group Inc.'s holdings.
- (6) September 2, 2009, Business New Brunswick and the Board of Management rejected Atcon's restructuring request to release security held by Business New Brunswick in favour of the Bank of Nova Scotia. The security in question was the Brun-Way contract worth about \$8 million and Vänerply worth about \$25 million. Chair of the meeting was Premier Graham.
- (7) September 11, 2009 the Cabinet reversed its September 2 decision. The Bank of Nova Scotia would i) rank in first position for Bank advances in excess of \$28.5 million; ii) share security with the Province on a 50/50 basis for operating loan amounts between \$10 million and \$28.5 million; and iii) release all of the security to the Province once the guaranteed Bank loan is reduced by \$10 million. The attendance record for this meeting was missing but the Premier testified that if he was present, he chaired the meeting. The former Clerk of the Executive Council, David Ferguson, testified that the Premier was present and chaired the meeting of September 11, 2009. (Transcript April 5, 2011, page 1122)

ANALYSIS

[176] In defense of the allegation that he breached s. 4 of the *Members' Conflict of Interest Act* by participating in the granting of guarantees Premier Graham relies upon several arguments that can be summarized as follows:

1. There is no evidence that he benefited directly or indirectly by way of furthering his own private interest.
2. He was unaware of his father's involvement with Vanerply or the Atcon Group.
3. The private interest of his father, Alan Graham, is excluded under the *Act* because his father was one of a broad class of persons who, like all other Atcon employees, would benefit in the continuation in business of the Atcon companies.
4. That s. 41(3) of the *Act* concerning triviality, inadvertence and an error in judgment made in good faith may apply.

[177] I agree with the Premier's argument that there is no evidence before the inquiry that he benefited directly or indirectly due to his participation in presiding over the numerous meetings of the Executive Council in granting guarantees to the Atcon Group in 2008, 2009 and 2010. Even to argue that he might benefit indirectly on a father-son basis is tenuous and unconvincing.

[178] In order to deal with the question of whether his participation in the granting of guarantees provided the opportunity to further the private interest of his father, it is necessary to revisit the pertinent sections in play alleging the breach.

Conflict of interest

4 A member shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is the opportunity to further the member's private interest or to further another person's private interest.

Stripped of its incidental wording, s. 4 becomes:

A member shall not participate in making a decision in the execution of his office if the member reasonably should know that in the making of the decision there is the opportunity to further another person's private interest.

Principles

[179] A former Conflict of Interest Commissioner, the late the Honourable Stuart G. Stratton Q.C. in a report absolving Margaret-Ann Blaney, December 5, 2000, stated at page 6:

I would recommend that Members not forget that the primary objective and purpose for the enactment of the *Members' Conflict of Interest Act* was to enhance public confidence in the integrity of government and its office holders by the prohibition of conflicts between the Member's office and powers and the Member's private interest.

[180] The Premier testified that he presided over the meetings of the Executive Council and that he supported the guarantees in favour of the Atcon Group. The question to be answered is whether the evidence demonstrates that the Premier reasonably should have known that his participation opened up the opportunity to further his father's private interest in the continued operation of the Atcon Group.

[181] The evidence is that the Premier knew that Alan Graham was a personal friend of Robert Tozer and did business with Robert Tozer and his Atcon companies after Mr. Graham retired from many years as a high ranking government member where he had

served as Minister of Natural Resources and Energy and Deputy Premier of the Province. The Premier also knew that his father had been a director of Vänerply in Sweden, an Atcon related company and that the Premier's brother, Andrew, had worked for Atcon.

[182] Thanks to the work of Alan Graham the Vänerply company was one of the profitable companies in the Atcon Group. It was mentioned by name or its Swedish location in every one of the presentations of the \$50 million Atcon claim for financial assistance. Vänerply was particularly singled out several times as its value was recognized either to monetize its worth for sale purposes or to use the asset as a tool in order to persuade the Bank of Nova Scotia to advance more funds to Atcon.

[183] The Premier testified that although he knew that his father had been a director of Vänerply in the early 2000's he "thought" that he was no longer involved because his father was not travelling to Sweden any more. The operative word is "thought":

Q. As, as Premier and as a member of the Cabinet, what, if any, consideration did you give to any possible conflict you had as a result of your father being a director of Vanerply?

A. There was no potential conflict that I was aware of, so there was no thought given to it.

Q. When you were Premier and, and by 2008 and 2009 what was your knowledge as to whether he remained a director?

A. I knew that he was no longer travelling to Sweden so I, I thought that he was no longer involved with the Atcon Group.

Transcript May 25, 2011
[Pages 1533-1534]

[184] Despite what the Premier thought, or did not think, an e-mail from Alan Graham to Leo Persson of Vänerply dated May 30, 2008 showed that he was still traveling to Sweden in 2008. This is the same year the Executive Council granted a guarantee of more than \$13 million to the Atcon Group: E-mails received from Ernst & Young between Alan Graham & Leo Persson Exhibit Book, Part 2.

Ämne: Re : Sale press

Från: "Alan & Connie Graham" <grahamexport@gmail.com>

Datum: Thu, 5 Jun 2008 09:14:39 – 0300

Till: "Leo Persson" <leo.persson@vanerply.se>

Leo

Sorry if I sounded a little impatient on the issue but it is important to get rid of the press now as we will have to get it out of the plant this year

As for Paul I appreciate the effort he has been providing but he must work harder to get it moved
Please keep me posted
Regards
Alan

On Fri, May 30, 2008 at 10:59 AM, Leo Persson
<leo.persson@vanerply.se> wrote:

You have got the answer from Paul regarding the press. Alan, I'm little surprised for second e-mail to Paul. Both Paul and I would like to sell the press, no question about that. Paul still in the payroll and I give him some time to look after other employment. If not we have to reduce him and he know that.

Have a need week-end
Leo Persson

Alan & Connie Graham skrev:

Leo
Can you give me an update on the sale of the press at Swedlam? We will have to get it moved this summer and the sale directly is the preferable way to go
Gerald needs the space where it is and is getting very impatient at the slowness we are moving
Have you got an answer for me on whether the Swedish Development Crop can finance it if it is sold out of the country? Also what is status of Paul is he still on payroll or have you given him his notice to look for other employment? We discussed these issues back in January when I was in Sweden and I would like to follow up for Robbie
Please advise
Alan [Emphasis added]

SILENCE IS GOLDEN---OR IS IT?

[185] He did not speak to his father about politics and his father did not speak to him about politics. Both categorically denied that either spoke to the other about the Atcon guarantees. Similarly Robert Tozer did not speak to his company's director, person on retainer and paid consultant, Alan Graham, and Alan Graham did not speak to Robert Tozer about the loan guarantees according to their respective testimonies.

[186] The code of political silence between the father and son was initiated between them independently and for the purpose of family peace and unity. Although the alleged breach of the *Act* has a political background the breach is an allegation of a conflict of interest

involving seasoned veterans at the highest level, not a case where proprieties of silence between them could or should dominate.

[187] Supposing the mutual understanding of silence persisted, it would have been quite simple for the Premier to instruct or request that one of his assistants, colleagues or public servants verify that his father was or was not involved.

[188] In a further alternative, access to s. 30 of the *Act* was available to ask the Commissioner for advice on whether the facts raised a potential conflict of interest.

[189] Given the history of Alan Graham and the Tozer Atcon Group known to the Premier, including the fact that the Premier knew that at one time his father was a director of Vänerply, it is unreasonable to assume that a Member of the Legislative Assembly charged with the duty of avoiding certain decisions in the execution of his office as set forth in section 4 of the *Members' Conflict of Interest Act* does not have any responsibility to verify the current status of the individual in question, his father, and that person's private interest. There was a duty on the Premier to exercise due diligence in verifying the status of his father's relationships in the Atcon Group.

[190] Earlier I had discounted the direct knowledge aspect of the Premier when I reduced section 4 to its essentials with respect to the alleged breach. The real question was whether in participating in the decision he "reasonably should know" it gave rise to the opportunity to further his father's private interest. To "reasonably should know" adds a whole new dimension to the member's responsibility. The test is objective. What would a reasonable person, possessed of the facts known to the member at the time, conclude? In determining his obligation under s. 4 what was the Premier's obligation, if any, to verify the current status of his father's relationship to the Atcon file, knowing the previous history established by the evidence?

[191] I find that Shawn Michael Graham, the Member of the Legislative Assembly, in question, given the facts known of the earlier relationship between Alan Graham, Robert Tozer and Vänerply and the Atcon companies, had an obligation to verify the subsequent status of Alan Graham's position with the Atcon Group seeking guarantees of \$50 million. When a person is possessed of certain historical facts and then makes an assumption, without any attempt at verification, the person runs the risk that the ill-founded assumption is dead wrong.

[192] I resist the argument of counsel to the inquiry that the Premier was willfully blind. In minimizing his previous knowledge based upon an erroneous assumption, the Premier reasonably should have known that he was sailing close to the wind and possibly could be caught up in a finding of willful blindness or even something just short of recklessness.

[193] The evidence, however, does not satisfy the proof required to show that the Premier was willfully blind when he failed to pursue the current status of his father's association

with Vänerply and the Atcon Group. However, his dereliction amounts to a high level of blindness approaching indifference.

SECTION 41(3) BREACH: TRIVIAL OR INADVERTENT OR ERROR OF JUDGMENT

41(3) If the Commissioner determines that a breach occurred although the member took all reasonable measures to prevent it, or that a breach occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Commissioner shall so state in the report and shall recommend that no sanction be imposed.

[194] The Premier's testimony that he did not give his participation in the decisions any thought negatives the argument that a breach of s. 4 was trivial, inadvertent or an error of judgment made in good faith under s. 41(3). Having given it no thought, as he reasonably should have, it cannot be unintentional. The evidence also establishes that he reasonably should have known that the opportunity to further his father's financial and business interests existed. The Premier's failure to check, based upon the facts already in his possession, negatives the good faith argument. He could easily have ascertained the conflict and taken preventative action. It was his responsibility. He chose not to know when he reasonably should have.

[195] What would the Premier have learned if he had spoken to his father to verify the current status of his father with respect to Vänerply? He would have learned that not only was his father still, after nine or ten years, a director of Vänerply, he was on retainer with various Atcon companies and was a paid consultant with Vänerply and other Atcon companies, the very companies that were applying for loan guarantees of \$50 million. Depending upon when the Premier checked with his father he would have found out that despite Alan Graham's letter of resignation from Vänerply dated May 15, 2009, addressed to Atcon Management that he had not resigned from his retainer and consulting positions with the Atcon Group and that he was still regularly involved with the management of Vänerply.

[196] Alan Graham was fully active in 2008 when the Deh Cho Bridge guarantee for in excess of \$13-million was granted and in 2009 until his letter of resignation. After his letter of resignation he was still on retainer and acting as a consultant for Atcon companies. It is disturbing that when Alan Graham was asked by a representative of the Premier whether he was still a director of Vänerply and he produced a copy of his May 15, 2009 letter of resignation addressed to Atcon Management, he did not inform the representative that he remained involved with the Atcon Group the rest of 2009 to the extent of billing up to and including December 31 although he testified that these were submitted in error and the two December 31, 2009 billings were cancelled by him February 24, 2010. By submitting the December 2009 invoices he must certainly have believed, at the time, that he was entitled to the money despite his subsequent change of mind.

[197] In failing to follow up with his father about the father's current status and thus satisfy the obligation of what a reasonable person should know about the Cabinet decisions being made the Premier remained, of his own choosing, passively uninformed. This, in my opinion, places the facts of the alleged breach in a category governed by the objective evidence of a person who reasonably should have known that his participation gave rise to the opportunity of furthering the financial and business interests of his father.

THE BROAD CLASS OF PERSONS

[198] One of the arguments presented is that s. 4 has not been breached because any private interest of Alan Graham that was being furthered was to him as one of a broad class of persons. The contention is that the assistance given through the guarantees provided money so that the Atcon Group could stay in business and pay their employees. The definition section defines "private interest" by describing what it is not:

S. 1 In this Act...

"private interest" does not include an interest in a matter

- (a) that is of general public application,
- (b) that affects a person as one of a broad class of persons, or
- (c) that concerns the remuneration and benefits of a member or an officer or employee of the Assembly;

[199] In 2009 the number of personnel had fallen to about 360. The argument is that Alan Graham falls within a "broad class of persons" affected, that is, he would be one of at least 360 people employed or receiving remuneration from Atcon. The flaw in the argument is that Alan Graham was not in the broad class described. He was not an employee with various wage deductions and contributions to employee plans. He was in an exclusive class of directors with only Robert Tozer and one or two Swedish personnel as required by Swedish law. Similarly, he was unique in that he was on retainer and was a paid consultant.

[200] There has been a tendency by commissioners to give the words "broad class" an expansive interpretation, and rightly so, but not an exaggerated one. Mr. Graham was in an exclusive group of a few as directors, or one as a consultant, and cannot by some mental by-pass, be arbitrarily included in the broad class as argued.

[201] What should the Premier have done with the knowledge that his father was a director of Vänernply, on retainer and an Atcon consultant?

[202] First, let me make it clear, it would be a conflict of interest if the Premier reasonably should have known that in participating in the decisions granting financial assistance to Atcon Holdings Inc. for which his father was a Vänernply director or an Atcon company consultant or on retainer with Vänernply or any Atcon company there was the opportunity to further the father's private interest.

[203] In coming to this conclusion I am focusing on the year 2009 and specifically the Order in Council 2009-130 of March 26 and subsequent changes to the financing.

[204] There is a well-recognized procedure for any Cabinet minister who finds him or herself in a conflict of interest position. The procedure is set forth in s. 15 of the *Members' Conflict of Interest Act*. The minister asks the Premier to appoint another minister to handle the matter in contention. Simply put, the Premier himself would request another minister to chair the Executive Council for any matters involving the Atcon related companies while his father was still involved in any of the capacities of director, person on retainer or consultant. The appointment itself would be made under s. 3 of the *Executive Council Act*.

[205] Given the knowledge of the Premier in 2009 of the history of his father's government, professional, personal, social and business association with Robert Tozer and his companies stretching back to the time his father was a Cabinet minister and, in particular, following his retirement from his political career; and given the knowledge that the Premier possessed of his father's position as a director of Vänerply; given the imperative introductory wording of s. 4 (a member shall not); and given the objective test wording of s. 4 (if the member... reasonably should know) I find, for the reasons given in this report, that Premier Graham was in a conflict of interest when he participated in the Executive Council decision, to wit, Order in Council 2009-130 dated March 26, 2009 providing financial assistance to Atcon Holdings Inc. thus giving the opportunity to further his father's private interest as a director, consultant and person on retainer. I am satisfied that the preponderance of evidence before me firmly establishes the breach of section 4.

[206] Having found that the former Premier was in a conflict of interest were there mitigating circumstances that would explain his departure from the norm? I think there were. In his testimony he referred to the pressures of the position, the pressures to help the Miramichi devastated by the loss of its traditional industries. He illustrated his concerns by reference to a policy shift from job creation to job retention. He emphasized that his focus was never on his father but on saving jobs because the government was seen in this case as the financial source of last resort. There was not only overwhelming pressure from his Miramichi and north shore colleagues to help the area and a local company, there was pressure from the media to do something. It was a time when the global economy was rapidly deteriorating and he was deeply involved in negotiations with the Province of Québec over the sale of NB Power. He also took into account that political pressure from the opposition was mounting as the fixed date for a provincial election loomed and the dissatisfaction against his government was nothing more than political posturing. One final note in his favour, which is not insignificant, is that he has retained his seat and left the consequences of his conflict of interest to be decided by his peers.

[207] As pointed out earlier in my report, Premier Graham and his counsel cooperated fully in the investigation and inquiry and without hesitation.

[208] There is no doubt that the Executive Council had the power to authorize the guarantees even in the face of the opinion and evidence of Business New Brunswick's personnel. That is the business of government and governing. It may well be that, given the legal wisdom of the day against disclosure, Business New Brunswick's embarrassing reasons for opposition to the guarantees would never have seen the light of day; but they have!

[209] Having reviewed all of the evidence obtained over the past months I have concluded that the advancement of the personal interest of Alan Graham was incidental to the granting of the financial assistance to the Atcon Group. Rightly or wrongly the \$50 million was going to be given to the Tozer companies regardless of any unproven influence that the father could, did or might have had. Whether the same amount of enthusiasm would have exerted itself at the Cabinet level if the Premier had stepped aside, as he should have and not presided over the meetings, is a matter of conjecture.

SANCTIONS

41(1) Where the Commissioner conducts an investigation under section 37 and finds that a member has breached any of sections 4 to 6, 8 to 11 or 13 to 17, inclusive, or has failed to file a gift disclosure statement, a private disclosure statement or a statement of material change within the time provided by this Act or has failed to disclose relevant information in that statement, the Commissioner may recommend

- (a) that the member be reprimanded,
- (b) that the Assembly impose a penalty on a member in an amount recommended by the Commissioner,
- (c) that the member's right to sit and vote in the Assembly be suspended for a specified period or until the fulfillment of a condition, or
- (d) that the member be expelled from membership in the Assembly and the member's seat be declared vacant.

41(2) The Commissioner may also recommend the alternative of a lesser sanction or no sanction if the member carries out the recommendations in the report to rectify the breach.

41(3) If the Commissioner determines that a breach occurred although the member took all reasonable measures to prevent it,

or that a breach occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Commissioner shall so state in the report and shall recommend that no sanction be imposed.

[210] A breach of the *Members' Conflict of Interest Act* does not always result in the member receiving a sanction such as where the breach is trivial, committed through inadvertence or an error of judgment made in good faith, all of which I have ruled out. The Premier testified that he gave no thought to his father being a director of Vänerply. In fact, he reasonably should have checked to find out whether his father was a director and he would have found out that not only was he still a director when the guarantees were being discussed and then approved, he was on retainer and was a paid consultant with the Atcon Group. Given the multi-factored history of his father with Robert Tozer and various Atcon companies it was incumbent upon him to verify and step aside. The responsibility of office displaced the mere defenses of inadvertence and error in judgment made in good faith.

[211] Members of the Legislative Assembly, ministers more so, must uphold the highest ethical standards so that public confidence and trust in their integrity and impartiality is assured.

[212] Counsel for the inquiry submits that the appropriate sanction would be a reprimand and a fine of \$1,000 to \$2,000 for each of the eight Executive Council meetings at which the Atcon guarantees were considered and at which the Premier presided. I view the matter as one distinct conflict and not otherwise.

[213] In view of the finding that I have made with respect to the primary purpose of the application for \$50 million as testified to by Premier Graham and that the furthering of his father's private interest although serious, was incidental to the financial aid, I recommend that for the member's breach of s. 4 of the *Members' Conflict of Interest Act* he be reprimanded and that a penalty in the amount of \$3,500.00 be imposed upon him.

[214] A reprimand alone in my opinion is insufficient. It should be accompanied by a fine of \$3,500.00 to indicate the seriousness of a breach of s. 4 and the fact that the breach was at the hands of a member of the Executive Council.

[215] It was incumbent upon Premier Graham to honour his duty not to put himself in a situation where interests might conflict with duties. Given the knowledge in his possession of the history of his father with Mr. Robert Tozer and his Atcon interests, it was incumbent on him to observe the import of the cautionary but exacting words in s. 4 "reasonably should know" and simply to have checked with his father where, presumably, he would have been alerted to the advisory role as consultant and on retainer that his father held in several Atcon companies plus his directorship in Vänerply. A discreet inquiry by any representative on his behalf, at least, would have raised a red flag and he could have removed himself from any conflictual situation.

[216] As a public office holder a minister must uphold the highest standards so that public confidence and trust in the integrity and impartiality of government are maintained and enhanced.

OTHER RECOMMENDATIONS

[217] That consideration be given to adopting a code of conduct for the members and for ministers. There is no code of conduct to guide the Members of the New Brunswick Legislative Assembly in either the broad or intricate dealings that the members conduct on behalf of the public. What is available to guide them? What guide can they follow or assist them other than the very general *Members' Conflict of Interest Act*? When a thoughtful matter arises they can turn to the Conflict of Interest Commissioner and pose a question but there is no written code that they can resource for routine matters or those of deeper concern upon which much practical and academic thought has been written. It may be time to consider improving the situation. The members are entitled to a well-thought out guide. An enumerated Code of Ethics would facilitate the members understanding in determining their obligations vis-à-vis the public interest. Instead of making a misstep that could be politically crippling or even worse, the member could reference the code and avoid a pitfall. The member would not have to guess or make an educated guess as to a solution to the problem at hand.

[218] My predecessor in office, the late Honourable Stuart Stratton, a retired Chief Justice of the New Brunswick Court of Appeal in the Volpé decision <http://www.gnb.ca/legis/Conflict/investigations/inv092801-e.asp> wrote:

I would respectfully remind those who read this Report that the *Members' Conflict of Interest Act* is legislation enacted to promote public confidence in elected public officials as they conduct public business.

And further on in the Volpé decision he said:

...[I]t is, I think, clear that the Act has been put in place to ensure that Members of the Executive Council and the Legislative Assembly should always adhere to the highest standard of ethics as they go about the people's business.

...clearly under the Act a Cabinet Minister is held to a higher standard of conduct than other Members of the Legislature.

[219] In 1973 the guidelines for public servants in New Brunswick stated that government employees should avoid matters that would put them in a conflict of interest. The political masters went further and advised public servants to avoid *apparent conflicts of interest*. The actual wording of that part of the "Conduct Guide" under the sub-heading of "Integrity" is as follows:

Public servants act honestly, fairly and openly; they honour their commitments; and they do not use public office for private or personal gain.

[...]

Public servants disclose any real or apparent conflicts between their personal or private interests and their official duties.

Public servants resolve any such conflicts in favour of the public interest.

[220] The Office of Human Resources has published a policy statement on conflicts of interest by employees who are not covered by the *Conflict of Interest Act* (Deputy Ministers, Executive Assistants etc.):

Employees shall not engage in any business or transaction of a financial or personal nature that would compromise the fair and honest discharge of their official duties.

There must not be, nor appear to be, any conflict between the private interest of the employee and the employee's responsibility to the public. (Emphasis added).

[221] Should the obligations to the public on the part of members be any less principled than that of public servants? Would the public's answer be any different?

[222] Consideration be given to requesting the Auditor General to conduct an audit of the financial assistance given by the Province of New Brunswick to Robert Tozer and his Atcon Group of companies including recommendations on how to improve the performance of Business New Brunswick. If the Auditor General is so directed, consideration should also be given to preserving all the evidence and information in this inquiry for use of the Auditor General.

CURRENT STATUS OF DEBT TO NEW BRUNSWICK

[223]

February 8, 2012

Via Email

R. Gary Faloon, QC
Counsel to the Graham Inquiry

Gilbert, McGloan, Gillis Offices
22 King St.
PO Box 7174, RPO Brunswick Sq.
Saint John, NB
E2L 4S6

Dear Sir:

RE: Graham Conflict Inquiry

In response to the four questions that Commissioner Ryan has asked you to pose in your letter of 3 February 2012, I can reply as follows:

1 The direct cost to date of 2008 (\$13,362,845.00) and 2009 (\$50,000,000.00) guarantees to Bank of Nova Scotia in support of Atcon Holdings Inc. is \$63,362,845.00. The Province's total direct cost remains as set out in the Exhibits to the evidence adduced during the inquiry.

2 (a) The Province has to date recovered \$20,000.00 as a result of the bankruptcy of the Atcon Companies (sale of real property owned by Atcon Industrial Services Inc. authorized by Court Order in July 2010).

2 (b) The Province has not recovered any monies under Mr. Robert Tozer's personal guarantees.

3 We understand that the Receiver Ernst & Young will shortly be in a position to make an interim disbursement to creditors of the amounts realized to date. We have no up to date information as to the Receiver's accounts or proposed allocation. Our expectation is that the Province's allocation of any interim disbursement will be less than \$1,000,000.00. There is a potential of the Province realizing certain recoveries on the Receivership of Atcon Plywood Inc. but the Court approved sale originally scheduled for October 2011 has still not closed and there appears to be significant difficulties and issues in closing this matter. There may be amounts recovered from the government of the North West Territories but these cannot be quantified until the Deh Cho Bridge deficiencies have been rectified which we do not anticipate prior to the end of the 2012 construction season.

4 The Province does not anticipate any further exposure or liability other than has been disclosed during the inquiry.

I trust this information is sufficiently informative for the Commissioner's purpose. Should you or he have further questions or require further clarification please feel free to ask.

Yours truly,

John B. D. Logan
Director

/sb

cc Bill Levesque
Byron James
Judith Keating, QC

Twenty-Third Report of the Receiver, dated July 25, 2012

[224] The Receiver, Ernst & Young Inc., filed its Twenty-Third report in the Court of Queen's Bench in Bankruptcy and Insolvency at Miramichi on the 25th day of July, 2012.

[225] The report was submitted to the Honourable Thomas W. Riordon by the Receiver's Senior Vice President, Paul D. Hickey, CA. The 54 page report, Tab 58 in this Report to the Speaker, detailed the Atcon properties realized to and including the 25th day of July 2012.

[226] After listing the claims and charges authorized to participate in a distribution, the Receiver set forth a proposed distribution and then made certain recommendations to and requests of the Court.

Order of Justice Thomas W. Riordon, July 31, 2012 – Tab 59

[227] Justice Riordon approved distributions to secured creditors and approved the activities of the Receiver in administering the receivership to date.

[228] The Court ordered payments of the following sums:

\$340,879.90 to the Province of New Brunswick

\$7,314,321.14 to the Bank of Nova Scotia

\$808,629.63 to Caterpillar Financial Services Limited

\$416,074.87 to GE Canada Equipment Financing G.P. and affiliates

\$174,076.42 to Aviva Insurance Company of Canada and affiliates

[229] RSM Richter Inc. report re: Atcon Holdings Inc., after the fact executive summaries are listed at Tab 60.

[230] Updated acknowledgement October 23, 2012 that future recovery of monies will be minimal.

[231]

October 23, 2012

Via Email

R. Gary Faloon, QC
Counsel to the Graham Inquiry
Gilbert, McGloan, Gillis Offices
22 King St.
PO Box 7174, RPO Brunswick Sq.
Saint John, NB
E2L 4S6

Dear Sir:

RE: Graham Conflict Inquiry

I acknowledge receipt of the Commissioner's request for an update on the realization of the Atcon assets sent by you on his behalf this date. You will recall my interim response of February 8, 2012 which, in part, indicated that \$20,000.00 had been received by the Province relating to the disposition of Atcon Industrial Services Inc.'s assets.

Since that time, Ernst & Young in its capacity as receiver, has sought and obtained authority from the Court of Queen's Bench to disburse and has disbursed \$340,879 in favour of the Province relating to its various recovery and realization activities.

PriceWaterhouseCoopers, in its capacity, as receiver of the Atcon Plywood Inc. assets is in receipt of approximately \$570,500 in the form of a forfeited deposit on the aborted sale of the plywood mill. The net amount of this deposit together with whatsoever "forced sale" or liquidation proceeds the plywood mill assets actually generate will be applied firstly to the guaranteed loan obligations of the Province to GE and secondly if funds remain available, to the Provinces direct debt relating to Atcon Plywood Inc. Thus, we anticipate recovery in this regard but cannot be more specific or precise at this time.

With respect to the monies held by the Government of the Northwest Territories, my client is decreasingly confident that there will be monies returned to the Province.

Remediation work on construction deficiencies continues and we do not anticipate closure on this matter until the 2013 construction season.

With respect to the sale of the Vanerply assets, the transaction closed last autumn. I am advised that pursuant to Swedish law no disbursement may be made for a period of twelve months. Whether the Province shall receive any portion of the proceeds of realization will be determined by the provisions of the priorities agreement between the Province and the Bank of Nova Scotia disclosed to the Commissioner and entered into evidence at the Inquiry. I cannot be more specific at this time. My client's expectation is that any recoveries in this regard will be relatively modest.

I trust this information is helpful to the Commissioner.

Yours truly,

John B. D. Logan
Director

/sb

cc Kenneth Cripps

Dated at the City of Fredericton this 14th day of February, 2013.

The Hon. Patrick A.A. Ryan, Q.C.
Commissioner

November 8, 2012, pursuant to s. 40 of the *Members' Conflict of Interest Act*, I met with Shawn Michael Graham and counsel Allison Whitehead, Q.C. to inform the member of the particulars of this report to the Assembly and to hear representations. I considered his representations and concluded that no changes would be made to my report.

The *ratio decidendi* of my report has not changed.

The Hon. Patrick A.A. Ryan, Q.C.
Commissioner

EXHIBIT BOOK
OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER
PROVINCE OF NEW BRUNSWICK

**REPORT TO THE SPEAKER
OF THE
LEGISLATIVE ASSEMBLY OF NEW BRUNSWICK
OF THE
INVESTIGATION/INQUIRY**

**BY THE HON. PATRICK A.A. RYAN, Q.C.,
CONFLICT OF INTEREST COMMISSIONER,**

**INTO ALLEGATIONS BY MR. CLAUDE WILLIAMS,
MLA FOR KENT SOUTH,
OF VIOLATIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT*
BY PREMIER SHAWN GRAHAM, MLA FOR KENT**



RECUEIL DE PIÈCES

**BUREAU DU COMMISSAIRE AUX CONFLITS D'INTÉRÊTS
DU NOUVEAU-BRUNSWICK**

**RAPPORT D'INVESTIGATION ET D'ENQUÊTE
PRÉSENTÉ AU PRÉSIDENT
DE L'ASSEMBLÉE LÉGISLATIVE DU NOUVEAU-BRUNSWICK**

**PAR L'HON. PATRICK A.A. RYAN, C.R.,
COMMISSAIRE AUX CONFLITS D'INTÉRÊTS,**

**À LA SUITE D'ALLÉGATIONS FAITES PAR M. CLAUDE WILLIAMS,
DÉPUTÉ DE KENT-SUD,
DE CONTRAVENTIONS À LA *LOI SUR LES CONFLITS
D'INTÉRÊTS DES DÉPUTÉS ET DES MEMBRES DU CONSEIL EXÉCUTIF*
PAR LE PREMIER MINISTRE SHAWN MICHAEL GRAHAM,
DÉPUTÉ DE KENT**

This is the Exhibit Book and contains all the information in its original or copied form that has been referred to in the body of the Report.

Exhibits are kept unchanged and untranslated in the language in which they were delivered or recorded as per the Supreme Court of Canada decision in *Charlebois v. Saint John (City)* [2005] 3 S.C.R. 563, 2005 SCC 74 per McLachlin C.J. and Major, Fish, Abella and Charron JJ., at paras 6 and 7; per Bastarache, Binnie, LeBel and Deschamps JJ at para 53.



Le présent recueil de pièces comprend tous les renseignements, sous forme originale ou reproduite, auxquels il est fait référence dans le corps du texte du rapport.

Les pièces ne sont ni modifiées ni traduites, comme le prévoit l'arrêt de la Cour suprême du Canada dans *Charlebois c. Saint John (Ville)*, [2005] 3 R.C.S. 563, 2005 CSC 74 (la juge en chef McLachlin et les juges Major, Fish, Abella et Charron, par. 6 et 7, et les juges Bastarache, Binnie, LeBel et Deschamps, par. 53).

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BUSINESS NEW BRUNSWICK

Exhibit #11

December 7, 2010

SUMMARY OF REQUEST

Blackwell Court Reporting

DATE: January 13, 2009

FOR DISCUSSION

COMPANY:

Name: Atcon Holdings Inc.
Location: Miramichi, N.B.
Principal(s): Robert Tozer
Nature of Business: Heavy metal manufacturing, machining and fabrication,
plywood manufacturing and construction.
Employment: Company claims to employ 2100

\$72 million of salaries and wages were paid to 1,785 NB
residents in 2007. \$65 million in 2008.

ASSISTANCE:

Recommendation: Not to support the request.

Application/Request from Company:

The company is requesting \$50,000,000 in loan guarantees:

Atcon Industrial Services

\$10,000,000 to complete the expansion of Atcon Industrial Services in Miramichi to enable the company to fabricate steel beams. This was initially proposed as an \$11,000,000 capital project, which received \$7,500,000 in provincial assistance. \$9,200,000 has been spent to date. The company estimates that an additional \$10,000,000 will be required to complete the project. Atcon cannot secure the financing to complete it.

Debt refinancing

\$20,000,000 to replace existing subordinated debt owed to McKenna Gale, which carries an interest rate of 15% to 18% and is due for repayment in 2010. This debt is secured by first charges on Atcon's Swedish plywood mill which is profitable and debt free, and a first charge over Atcon's interests in the Brunway NB highway maintenance contract.

Operating credit

\$20,000,000 to increase the company's operating line of credit from the present \$40,000,000 limit to \$60,000,000. The company is seeking this in order to ensure that it has the financial capability to take on additional projects

as opportunities arise, including the ability to provide contract security deposits when required.

Will recommendation be acceptable to client: Yes ___ No X

ECONOMIC PAYBACK: N/A

(See Section 11)

RISK ASSESSMENT: Low ___ Medium ___ High X

(See Section 12)

KEY ISSUES

- Atcon is a major employer in the area with an annual payroll of some \$70 million, and the company's employment efforts have gone unrecognized as most of the work is taking place in Alberta and northern Canada.
- 80% of Atcon's revenues are derived through Atcon Construction, a sector not normally supported by BNB.
- The vast majority of the construction revenues are generated outside of New Brunswick, using NB labour and generating wealth for New Brunswickers and tax revenues for NB.
- Inability of the company to access credit will limit the company's operations and could lead to a major downsizing of the company. The company is already in the process of reducing its fixed overhead expenses.
- Atcon is confident that it can achieve its 2009 forecast of \$279 million in revenues and pre-tax profit of \$22 million.
- Atcon has a dismal record of meeting its payment obligations to BNB.
- The recent acquisition (by lease) of a corporate jet will create a perception issue if assistance is provided.
- The requested \$10 million to complete the Atcon Industrial Services project in Miramichi has been necessitated by a \$9 million cost over-run of an \$11 million project. This resulted from the company's decision to expand the scope (and cost) of the proposed project without the knowledge of BNB and without securing the required financing to fund the incremental work.
- The requested \$20 million working capital guarantee relates primarily to requirements associated with construction activities (a sector not normally supported by BNB).
- The company continues to embark on projects beyond its financial capabilities and then seeks provincial support after the fact.

SCHEDULE "A"

EVALUATION OF COMPANY

Company History: The Atcon Group consists of 16 companies involved in construction, metal working and machining, and manufacturing of value-added wood products. They have over 2,000 employees in North America and Sweden with office crews in Calgary and Fort McMurray. They currently use people from Miramichi for construction jobs in Western Canada having them onsite for 4 weeks and two weeks home with Atcon taking care of flights and accommodations.

Plant Facilities: The Company operates from four separate facilities in Miramichi.

Product(s)/Technology:

Highway logging trailers, fork lift loading ramps, steel and aluminum pallets, material handling equipment, mining, quarrying and ore dressing machinery, conveyors, rock crushers, structural steel beams, etc. The products are complex and require multiple and interdependent stages.

Raw-Material Resource: The primary raw material consists of steel which is readily available.

Marketing/Distribution:

The target markets are in the energy infrastructure industry with a particular focus on the Alberta Oil Sands as well as the wind energy sector. According to the Company, contracts valued at \$15M have been secured from Krupp Canada. A total of \$8M has been delivered to date. Atcon has also been awarded a \$133,628,450 bridge construction project in the Northwest Territories which will take 3 years to complete.

The Group is also currently working on the following contracts:

Suncor-Structural steel for bridge in Fort McMurray valued at \$10M to be completed in fiscal 2008;
Metso Minerals-fabrication of crushers valued at \$5M annually.

The company claims that \$175 million, or 63% of forecasted sales for the coming year are committed. This claim has not been verified by BNB.

Competition:

Competition is not an issue for the energy market they are targeting in Alberta. The manufacturing capacity appears to be the key in order to secure contracts in this market. However, internal competition in NB could be an issue as the company may be competing with Ocean Steel & Construction, MQM and York Steel Inc for future contracts.

Management:

The organization is supported by the following persons within the Atcon Group:

Gary Tozer-Senior project manager and former Trac plant manager with 32 years experience in design and fabrication of mechanical equipment and large structural steel projects.

James Clark - Chief engineer for the Atcon Group with 21 years experience as a mechanical engineer in project management, construction and industrial maintenance.

Robert Tozer - CEO and President of the Atcon Group with 32 years experience as manager for large civil projects, aggregate and mining operations and equipment fabrication.

Bill McLeod- Plant Manager- 20 years experience with the former Maritime Steel facility.

Sales for Atcon are generated through the combined effort of the following persons:

Robert Tozer-CEO

Mark Ledwell-Vice President and General Counsel

Gordon Burns-VP Sales and Business Development

Financial:

Atcon Holdings (Parent Company):

(Based on officer's review as copies of financial statements were not provided, with the exception of the October 2008 internal statements and projections.

Year end audited consolidated statements at January 31, 2006 show revenues of \$100 million, and a net profit of \$3 million including depreciation of \$6.6 million. The Company had total assets of \$158.6 million, and equity of \$24 million.

The group paid wages and benefits in the year, primarily to New Brunswickers, in excess of \$25 million.

Year end audited consolidated Statements at January 31, 2007 show revenues of \$204 million, and a net profit of \$12 million including depreciation of \$6 million. The Company has total assets of \$206 million, and equity of \$35.5 million.

During the year, the Company paid wages and benefits, primarily to New Brunswickers, in excess of \$53 million.

Year end internal consolidated statements at January 31, 2008 show revenues of \$258 million, with a net profit of \$2.5 million including depreciation of \$6 million. Wages paid to NB residents during the year were \$72 million.

Internal consolidated statements for the 9 month period ended October 25, 2008 show revenues of \$213 million with a net profit of \$7.4 million including depreciation of \$3 million.

Assistance provided to the Atcon Group is as follows:

Atcon Veneer Products Inc. (outstanding assistance \$0)

2004 - \$290,000 term loan guarantee

2004 - \$300,000 working capital loan guarantee

This assistance was approved but never put in place due to changes in the company's plans.

Atcon Plywood Inc.:(outstanding assistance \$2,490,000)

1999 - \$2,500,000 loan guarantee (since released)

1991 - \$1,250,000 forgivable loan (forgiven as agreed based on employment)

2004 - \$2,500,000 guarantee issued and outstanding (balance about \$950,000)

2004 - \$4,000,000 Bridge loan issued. Outstanding balance is \$1,540,000.

Skyway Wood Products (Eastwood Furniture): (outstanding assistance \$377,000)

1997 - \$384,000 loan and a \$532,000 forgivable loan from the CFB Chatham Redevelopment Fund. This company has been closed. The \$137,000 balance of the Loan and the unforgiven portion of the forgivable loan, estimated to be \$240,000, should be repaid by the Atcon Group.

ARVIN: (outstanding assistance \$350,000)

2000 - \$400,000 forgivable loan (not fully advanced). This is in connection with the renovations to the former TechSea building. The company has moved its production equipment into the building and is starting to create the 80 required jobs. The long delay in the move and job creation results from the devastating effects of the closure of COM DEV in Moncton, which was Arvins biggest customer.

Envirem Technologies: (Outstanding assistance \$16,000)

2001 - \$100,000 loan and a contribution of 100 acres of land at CFB Chatham. Agreement being met. Loan balance about \$16,000.

Atcon Group

2000 - \$50,000 grant cost sharing of bid preparation.

Nelson Venture Capital

\$210,000 venture capital loan made to the employees of Nelson Forest Products. Atcon assumed this liability and it has been repaid.

Nutritec (outstanding assistance \$750,000)

A \$100,000 loan has been made to Nutritec Inc., which is a joint venture between Atcon and Couvoir Westco. 2007 - \$650,000 repayable loan was made to Nutritec.

Atcon Industrial Services (outstanding assistance \$6,310,000)

2008 - \$3,060,000 forgivable loan

2008 - \$3,250,000 repayable loan

2008 - \$1,190,000 contribution from RDC

Atcon Holdings (outstanding assistance \$13,362,845)

2008 - \$13,362,845 loan guarantee

Total outstanding assistance to the group is approximately \$23,600,000.

Atcon Holdings Inc.
Consolidated Statement of Earnings and Retained Earnings
(Unaudited)

	39 weeks ended					4 weeks ended				
	October 25, 2008 Act	% of sales	October 27 2007 Act	% of sales	Act vs Prior Year Var B(W)	October 25, 2008 Act	% of sales	October 27 2007 Act	% of sales	Act vs Prior Year Var B(W)
Net revenues	\$213,304,119	100.0%	\$ 213,925,950	100.0%	\$ (621,831)	\$24,441,283	100.0%	\$ 42,302,233	100.0%	\$ (17,860,950)
Direct expenses	125,348,655	58.8%	124,091,845	58.0%	(1,256,809)	14,871,653	60.8%	27,680,424	65.4%	12,808,771
Wages, salaries and benefits	58,238,756	27.3%	59,296,482	27.7%	1,057,726	7,483,857	30.6%	11,835,728	28.0%	4,351,871
	183,587,411	86.1%	183,388,328	85.7%	(199,083)	22,355,510	91.5%	39,516,152	93.4%	17,160,643
Gross margin	29,716,708	13.9%	30,537,622	14.3%	(820,914)	2,085,773	8.5%	2,785,080	6.5%	(700,308)
General and administrative expenses	9,860,725	4.6%	7,469,071	3.5%	(2,391,654)	1,204,933	4.9%	(2,211,373)	-5.2%	(3,416,306)
Earnings before interest, income taxes, depreciation and amortization	19,855,983	9.3%	23,068,551	10.8%	(3,212,568)	880,840	3.6%	4,997,453	11.8%	(4,116,613)
Depreciation and amortization	3,007,494	1.4%	4,617,857	2.2%	1,510,363	293,524	1.2%	495,594	1.2%	203,070
Earnings from operations	16,848,489	7.9%	18,450,694	8.6%	(1,602,205)	587,316	2.4%	4,500,859	10.5%	(3,913,543)
Interest and bank charges	2,925,053	-	1,818,299	-	(1,106,755)	(56,935)	-	324,761	-	381,715
Exchange loss (gain) on long term debt	-	-	(444,441)	-	(444,441)	-	-	-	-	-
Interest on long term debt	3,925,397	-	4,965,452	-	1,040,055	589,753	-	535,705	-	(54,058)
	6,850,450	-	6,339,309	-	(511,151)	532,829	-	860,465	-	327,557
Earnings (loss) before income taxes and equity in earnings of companies subject to significant influence	9,998,029	-	12,111,385	-	(2,113,356)	54,487	-	3,640,373	-	(3,585,886)
Income taxes	-	-	-	-	-	-	-	-	-	-
Current	2,589,668	-	4,182,799	-	(1,593,131)	(315,083)	-	1,027,925	-	(1,343,008)
Future	(442,500)	-	712,683	-	(1,155,183)	(62,517)	-	353,975	-	(416,592)
	2,147,168	-	4,895,482	-	2,748,314	(377,700)	-	1,381,900	-	1,759,600
Earnings (loss) before equity in earnings of companies subject to significant influence	7,850,861	-	7,215,903	-	634,958	432,187	-	2,258,473	-	(1,826,286)
Equity in earnings of companies subject to significant influence	(459,752)	-	3,860,363	-	(4,320,115)	(600,752)	-	822,158	-	(1,422,910)
Net earnings	\$ 7,391,109	-	\$ 11,076,267	-	\$ (3,685,157)	\$ (168,565)	-	\$ 3,080,632	-	\$ (3,249,197)
Retained earnings, beginning of period	\$ 35,691,282	-	\$ 34,923,732	-	\$ 767,550	\$43,210,956	-	\$ 42,919,355	-	\$ 291,589
Net earnings	7,391,109	-	11,076,267	-	(3,685,157)	(168,565)	-	3,080,532	-	(3,249,197)
Dividends	(40,000)	-	-	-	(40,000)	-	-	-	-	-
Retained earnings, end of period	\$ 43,042,391	-	\$ 45,999,998	-	\$ (2,957,607)	\$43,042,391	-	\$ 45,999,998	-	\$ (2,957,607)

Segment summary

	Actual		Actual	
	Rev	EBITDA	Rev	EBITDA
Construction	\$194,526,460	\$20,010,080	\$23,822,601	\$ 929,131
Wood	2,935,885	(2,865,596)	37,260	(197,160)
Environmental	8,101,612	1,056,476	405,940	68,671
Steel	21,865,864	617,740	2,063,643	215,301
Corporate	(14,125,702)	1,037,283	(1,888,162)	(135,103)
Total	\$213,304,119	\$19,855,983	\$24,441,283	\$ 880,840

See Note 1

Atcon Holdings Inc.
Consolidated Balance Sheet

(Unaudited)	October 25, 2008	January 26, 2008
Assets		
Current		
Short term deposit	\$ -	\$ 309,469
Receivables	70,248,449	41,648,479
Inventories	41,126,614	52,813,183
Other current assets	12,517,000	-
Prepaid expenses	16,649,289	9,138,841
	<u>140,541,351</u>	<u>103,909,973</u>
Receivable from related parties, non-interest bearing no set terms of repayment	11,300,576	10,636,977
Accrued investment tax credits	5,498,764	5,041,533
Property and equipment	61,608,590	55,460,479
Future income tax	-	1,430,877
Investment in SLAM Exploration Ltd.	69,931	69,931
Patents and trademarks	4,376	4,791
Investment in Brunway	1,848,223	12,393,920
Deferred start-up costs	169,512	210,378
Deferred finance charges	799,189	1,265,415
Goodwill	232,047	232,047
	<u>\$ 222,072,559</u>	<u>\$ 190,656,319</u>
Liabilities		
Current		
Bank indebtedness	\$ 4,380,951	\$ 754,324
Lines of credit	32,775,189	38,134,868
Payables and accruals	76,929,028	48,093,669
Income taxes payable	2,840,799	285,435
Repayable advances	37,900	90,400
Future income taxes, net	5,929,396	7,513,396
Current portion of long term debt	4,347,843	7,055,176
	<u>127,241,106</u>	<u>101,927,267</u>
Long term liabilities	550,359	608,982
Long term debt	20,701,211	15,256,330
	<u>148,492,676</u>	<u>117,792,579</u>
Deferred government assistance	9,297,157	5,376,104
Future income taxes	(289,376)	-
Subordinated debt	20,000,000	30,000,000
Minority interest	965,595	1,232,261
	<u></u>	<u></u>
Shareholder's equity		
Capital stock	564,115	564,115
Retained earnings	43,042,391	35,691,260
	<u>43,606,506</u>	<u>36,255,375</u>
	<u>\$ 222,072,558</u>	<u>\$ 190,656,319</u>

Atcon Holdings Inc.
Consolidated Statement of Cash Flows

(Unaudited)

	39 weeks ended October 25, 2008	4 weeks ended October 25, 2008
39 weeks ended		
Cash derived from (applied to)		
Operations		
Net income	\$ 5,991,109	\$ (568,565)
Equity in earnings of associated company	776,046	917,046
Depreciation	2,691,200	(22,770)
Loss on disposal of assets	(568,470)	-
Deferred finance charges	466,226	50,544
Future income taxes	(442,500)	(62,617)
	<u>8,913,611</u>	<u>313,639</u>
Change in		
Trade receivables	(26,326,697)	11,138,128
Holdbacks	(5,144,662)	(1,141,517)
Insurance receivable	(365,072)	(504,952)
Inventories	12,191,523	11,895,098
Prepays	(7,510,448)	768,860
Other current assets	(12,517,000)	(12,517,000)
Accrued investment tax credits	(431,477)	(124,200)
Payables and accruals	29,463,196	(6,209,442)
Related party trade receivables and payables	(409,832)	(470,365)
Other liabilities	(111,197)	(505,664)
Income taxes payable	2,955,364	84,918
	<u>707,311</u>	<u>2,727,502</u>
Investing		
Purchase of		
Total property and equipment	(11,029,539)	(1,401,792)
Deferred costs	40,728	4,191
Investments	10,395,413	-
Proceeds from sale of assets	2,251,641	-
	<u>1,658,243</u>	<u>(1,397,601)</u>
Financing		
Proceeds from the issuance of long term debt	7,261,975	1,016,302
Repayment of long term debt	(14,340,243)	(308,253)
Increase in line of credit	(2,420,254)	(4,069,552)
Proceeds from issuance of common shares	376,290	(8,834)
Dividends paid	(40,000)	-
Redemption of preference shares	(266,666)	-
Deferred government assistance	4,086,547	124,211
Advances to parent company, net	(649,831)	487,379
	<u>(5,992,183)</u>	<u>(2,758,747)</u>
Net increase in cash	(3,626,629)	(1,428,845)
Cash (bank indebtedness)		
Beginning of period	(754,323)	(2,952,107)
End of year	<u>\$ (4,380,952)</u>	<u>\$ (4,380,952)</u>

con Holdings Inc.
Interim Statement of Earnings and Retained Earnings

	Rolling YTD													FY 2010
	Month Jan09	Month Feb09	Month Mar09	Month Apr09	Month May09	Month Jun09	Month Jul09	Month Aug09	Month Sept09	Month Oct09	Month Nov09	Month Dec09	Month Jan10	
revenues	\$ 3,741,439	\$15,928,900	\$21,220,900	\$24,086,000	\$18,630,400	\$32,807,400	\$37,707,800	\$35,686,700	\$26,457,600	\$ 26,553,900	\$17,646,400	\$10,583,900	\$10,027,900	\$ 278,439,000
costs and expenses	2,682,797	7,399,159	10,651,259	12,468,309	9,797,928	17,815,544	20,918,144	20,118,169	14,441,669	13,970,144	8,871,464	5,338,519	4,962,309	145,752,718
depr. salaries and benefits	3,749,275	5,791,540	6,741,540	7,321,350	5,739,203	9,195,760	10,011,315	9,982,518	7,425,365	8,337,900	5,740,775	3,657,300	3,513,090	83,458,845
	6,432,072	13,190,699	17,402,799	19,779,559	15,537,132	27,011,294	30,929,459	30,100,687	21,868,034	22,308,044	14,612,239	8,995,919	8,475,398	230,211,362
gross margin	2,309,367	2,736,201	3,818,101	4,306,341	3,093,269	5,795,106	6,778,341	6,588,014	4,589,766	4,245,856	3,034,161	1,687,981	1,552,602	48,226,638
operating and administrative expenses	1,147,092	806,762	703,492	703,492	744,762	815,892	815,892	895,162	967,592	967,892	1,048,912	1,017,892	1,017,892	10,485,935
earnings before interest, income taxes, depreciation and amortization	1,162,275	2,049,439	3,114,609	3,602,849	2,348,506	4,980,214	5,962,449	5,692,851	3,621,874	3,277,964	1,985,249	670,089	534,610	37,740,702
depreciation and amortization	289,785	325,308	269,119	274,311	347,726	290,588	298,727	377,314	314,798	325,513	393,385	328,109	328,109	3,673,007
earnings from operations	862,511	1,724,131	2,845,490	3,328,538	2,000,780	4,689,626	5,663,722	5,315,538	3,307,075	2,952,451	1,591,864	341,980	206,501	33,867,695
interest and bank charges	360,612	434,643	348,108	317,745	432,946	364,985	309,744	285,430	353,806	378,891	387,964	371,593	389,397	4,385,252
foreign gain & unusual item	-	-	-	-	-	-	-	-	-	-	-	-	-	-
real on long term debt	795,060	575,958	538,979	538,373	577,566	542,651	540,906	579,130	542,664	543,033	586,447	547,815	545,673	6,560,295
state tax	1,155,672	1,010,501	887,087	856,118	1,010,613	807,636	850,651	874,560	896,470	921,924	974,411	919,409	936,070	11,045,548
earnings before equity in earnings of associated company and taxes	(293,161)	713,530	1,958,403	2,472,420	990,168	3,781,990	4,713,071	4,440,978	2,410,605	2,030,527	617,453	(577,429)	(728,569)	22,822,147
income and capital taxes	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Current	10,289	119,382	150,004	223,834	198,383	448,200	531,746	507,230	293,139	244,432	131,383	(20,491)	(65,277)	2,761,956
Future	(121,584)	100,526	468,252	558,883	110,037	753,488	967,918	905,254	469,666	395,539	57,492	(173,054)	(177,001)	4,438,149
	(111,395)	219,908	618,256	782,717	308,418	1,201,688	1,499,664	1,412,524	762,805	641,072	188,875	(193,545)	(242,278)	7,200,115
earnings before equity in earnings of associated company	(181,766)	493,622	1,340,147	1,689,703	681,748	2,580,292	3,213,407	3,028,453	1,647,800	1,388,456	428,578	(383,884)	(487,291)	15,522,032
equity in earnings of associated company	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	300,000
earnings	\$ (156,766)	\$ 518,622	\$ 1,365,147	\$ 1,714,703	\$ 706,748	\$ 2,605,292	\$ 3,238,407	\$ 3,053,453	\$ 1,672,800	\$ 1,414,456	\$ 453,578	\$ (358,884)	\$ (462,291)	\$ 15,922,032
accumulated earnings, beginning of period	\$43,923,317	\$43,725,569	\$44,245,191	\$45,610,338	\$47,325,041	\$48,031,790	\$50,637,082	\$53,875,489	\$56,928,942	\$ 58,601,742	\$60,016,198	\$60,459,776	\$60,110,892	\$ 43,725,559
earnings	(156,766)	518,622	1,365,147	1,714,703	706,748	2,605,292	3,238,407	3,053,453	1,672,800	1,414,456	453,578	(358,884)	(462,291)	15,922,032
dividends	-	-	-	-	-	-	-	-	-	-	-	-	-	-
accumulated earnings, end of period	\$43,766,551	\$44,245,191	\$45,610,338	\$47,325,041	\$48,031,790	\$50,637,082	\$53,875,489	\$56,928,942	\$58,601,742	\$ 60,016,198	\$60,469,776	\$60,110,892	\$59,648,601	\$ 59,648,601

SCHEDULE 2D

ADVICE TO THE MINISTERNEW BRUNSWICK INDUSTRIAL DEVELOPMENT BOARDMINUTES

A Conference call meeting of the New Brunswick Industrial Development Board was held on Monday, January 19, 2009 at 3:30 p.m.

Those members present were: Byron James (Chairperson)
Bill Levesque
Tom Reid
Phil LePage
Jim McKay
Dick Burgess

With a quorum of members present, the meeting was declared properly constituted. The meeting was chaired by Byron James with secretary support provided by Julie Gionet. The agenda for the present meeting was approved as presented.

.....
COMPANY

Location:

Employment:

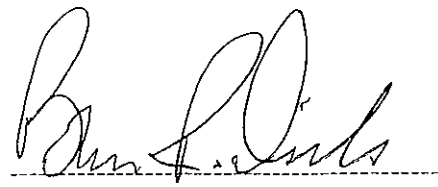
Nature of Business:

Request from the Company:

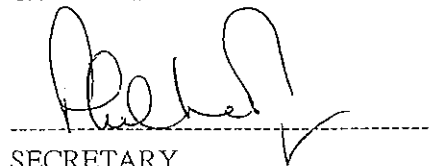
Financial Officer:

Departmental Recommendation:

Board Recommendation:



CHAIRPERSON



SECRETARY

COMPANY Atcon Holdings Inc.
Location: Miramichi
Employment: Present: 2100
New Incremental: 0
Nature of Business: Heavy metal manufacturing, machining and fabrication, plywood manufacturing and construction
Request from the Company: \$50,000,000 in Loan guarantees
\$10,000,000 to complete the expansion of Atcon Industrial services
\$20,000,000 to retire existing subordinated debt
\$20,000,000 to increase its existing operating line of credit
Financial Officer: John Watt
Departmental Recommendation: Rejection
Board Recommendation: Deferred *p-*

Ben L. Dick

CHAIRPERSON

Heather

SECRETARY

BRD
MB

COMPANY _____

Location:

Employment:

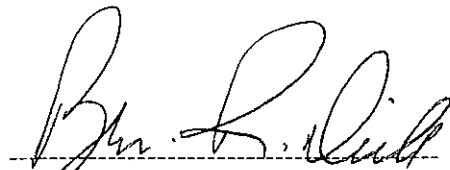
Nature of Business:

Request from the Company:

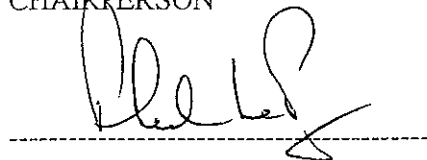
Financial Officer:

Departmental Recommendation:

Board Recommendation:



CHAIRPERSON



SECRETARY





COMPANY
Location:

Employment:

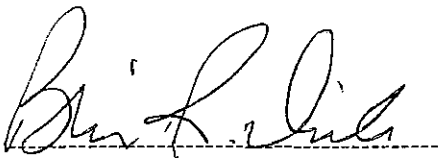
Nature of Business:

Request from the Company:

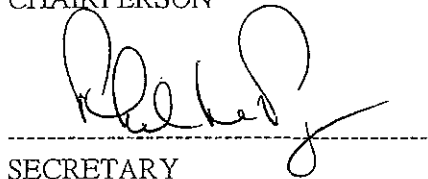
Financial Officer:

Departmental Recommendation:

Board Recommendation:



CHAIRPERSON



SECRETARY



MB

P.R.C. Minutes of Jan 19/09
a copy of officer's submission
except for draft MEC.

COMPANY Atcon Holdings Inc.

Employment: Present: 2100
Projected:

Nature of Business: Heavy metal manufacturing, machining and fabrication,
plywood manufacturing and construction.

Request from Company: \$50,000,000 in loan guarantees.

Financial Officer: John Watt

Officer's Recommendation: To decline the Company's request.

Departmental Recommendation: The Committee agreed with the officer's recommendation. *pc*

BUSINESS NEW BRUNSWICK

SUMMARY OF REQUEST

DATE:

January 13, 2009

FOR DISCUSSION

COMPANY:

Name: Atcon Holdings Inc.
Location: Miramichi, N.B.
Principal(s): Robert Tozer
Nature of Business: Heavy metal manufacturing, machining and fabrication, plywood manufacturing and construction.
Employment: Company claims to employ 2100

\$72 million of salaries and wages were paid to 1,785 NB residents in 2007. \$65 million in 2008.

ASSISTANCE:

Recommendation: Not to support the request.

Application/Request from Company:

The company is requesting \$50,000,000 in loan guarantees:

Atcon Industrial Services

\$10,000,000 to complete the expansion of Atcon Industrial Services in Miramichi to enable the company to fabricate steel beams. This was initially proposed as an \$11,000,000 capital project, which received \$7,500,000 in provincial assistance. \$9,200,000 has been spent to date. The company estimates that an additional \$10,000,000 will be required to complete the project. Atcon cannot secure the financing to complete it.

Debt refinancing

\$20,000,000 to replace existing subordinated debt owed to McKenna Gale, which carries an interest rate of 15% to 18% and is due for repayment in 2010. This debt is secured by first charges on Atcon's Swedish plywood mill which is profitable and debt free, and a first charge over Atcon's interests in the Brunway NB highway maintenance contract.

Operating credit

\$20,000,000 to increase the company's operating line of credit from the present \$40,000,000 limit to \$60,000,000. The company is seeking this in order to ensure that it has the financial capability to take on additional projects

as opportunities arise, including the ability to provide contract security deposits when required.

Will recommendation be acceptable to client: Yes ☐ No ☒

ECONOMIC PAYBACK: N/A

(See Section 11)

RISK ASSESSMENT:

Low ☐ Medium ☐ High ☒

(See Section 12)

KEY ISSUES

- Atcon is a major employer in the area with an annual payroll of some \$70 million, and the company's employment efforts have gone unrecognized as most of the work is taking place in Alberta and northern Canada.
- 80% of Atcon's revenues are derived through Atcon Construction, a sector not normally supported by BNB.
- The vast majority of the construction revenues are generated outside of New Brunswick, using NB labour and generating wealth for New Brunswickers and tax revenues for NB.
- Inability of the company to access credit will limit the company's operations and could lead to a major downsizing of the company. The company is already in the process of reducing its fixed overhead expenses.
- Atcon is confident that it can achieve its 2009 forecast of \$279 million in revenues and pre-tax profit of \$22 million.
- Atcon has a dismal record of meeting its payment obligations to BNB.
- The recent acquisition (by lease) of a corporate jet will create a perception issue if assistance is provided.
- The requested \$10 million to complete the Atcon Industrial Services project in Miramichi has been necessitated by a \$9 million cost over-run of an \$11 million project. This resulted from the company's decision to expand the scope (and cost) of the proposed project without the knowledge of BNB and without securing the required financing to fund the incremental work.
- The requested \$20 million working capital guarantee relates primarily to requirements associated with construction activities (a sector not normally supported by BNB).
- The company continues to embark on projects beyond its financial capabilities and then seeks provincial support after the fact.

SCHEDULE "A"

EVALUATION OF COMPANY

Company History: The Atcon Group consists of 16 companies involved in construction, metal working and machining, and manufacturing of value-added wood products. They have over 2,000 employees in North America and Sweden with office crews in Calgary and Fort McMurray. They currently use people from Miramichi for construction jobs in Western Canada having them onsite for 4 weeks and two weeks home with Atcon taking care of flights and accommodations.

Plant Facilities: The Company operates from four separate facilities in Miramichi.

Product(s)/Technology:

Highway logging trailers, fork lift loading ramps, steel and aluminum pallets, material handling equipment, mining, quarrying and ore dressing machinery, conveyors, rock crushers, structural steel beams, etc. The products are complex and require multiple and interdependent stages.

Raw-Material Resource: The primary raw material consists of steel which is readily available.

Marketing/Distribution:

The target markets are in the energy infrastructure industry with a particular focus on the Alberta Oil Sands as well as the wind energy sector. According to the Company, contracts valued at \$15M have been secured from Krupp Canada. A total of \$8M has been delivered to date. Atcon has also been awarded a \$133,628,450 bridge construction project in the Northwest Territories which will take 3 years to complete.

The Group is also currently working on the following contracts:

Suncor-Structural steel for bridge in Fort McMurray valued at \$10M to be completed in fiscal 2008;
Metso Minerals-fabrication of crushers valued at \$5M annually.

The company claims that \$175 million, or 63% of forecasted sales for the coming year are committed. This claim has not been verified by BNB.

Competition:

Competition is not an issue for the energy market they are targeting in Alberta. The manufacturing capacity appears to be the key in order to secure contracts in this market. However, internal competition in NB could be an issue as the company may be competing with Ocean Steel & Construction, MQM and York Steel Inc for future contracts.

Management:

The organization is supported by the following persons within the Atcon Group:

Gary Tozer-Senior project manager and former Trac plant manager with 32 years experience in design and fabrication of mechanical equipment and large structural steel projects.

James Clark - Chief engineer for the Atcon Group with 21 years experience as a mechanical engineer in project management, construction and industrial maintenance.

Robert Tozer - CEO and President of the Atcon Group with 32 years experience as manager for large civil projects, aggregate and mining operations and equipment fabrication.

Bill McLeod- Plant Manager- 20 years experience with the former Maritime Steel facility.

Sales for Atcon are generated through the combined effort of the following persons:

Robert Tozer-CEO

Mark Ledwell-Vice President and General Counsel

Gordon Burns-VP Sales and Business Development

Financial:

Atcon Holdings (Parent Company):

(Based on officer's review as copies of financial statements were not provided, with the exception of the October 2008 internal statements and projections.

Year end audited consolidated statements at January 31, 2006 show revenues of \$100 million, and a net profit of \$3 million including depreciation of \$6.6 million. The Company had total assets of \$158.6 million, and equity of \$24 million.

The group paid wages and benefits in the year, primarily to New Brunswickers, in excess of \$25 million.

Year end audited consolidated Statements at January 31, 2007 show revenues of \$204 million, and a net profit of \$12 million including depreciation of \$6 million. The Company has total assets of \$206 million, and equity of \$35.5 million.

During the year, the Company paid wages and benefits, primarily to New Brunswickers, in excess of \$53 million.

Year end internal consolidated statements at January 31, 2008 show revenues of \$258 million, with a net profit of \$2.5 million including depreciation of \$6 million. Wages paid to NB residents during the year were \$72 million.

Internal consolidated statements for the 9 month period ended October 25, 2008 show revenues of \$213 million with a net profit of \$7.4 million including depreciation of \$3 million.

Assistance provided to the Atcon Group is as follows:

Atcon Veneer Products Inc. (outstanding assistance \$0)

2004 - \$290,000 term loan guarantee

2004 - \$300,000 working capital loan guarantee

This assistance was approved but never put in place due to changes in the company's plans.

Atcon Plywood Inc.:(outstanding assistance \$2,490,000)

1999 - \$2,500,000 loan guarantee (since released)

1991 - \$1,250,000 forgivable loan (forgiven as agreed based on employment)

2004 - \$2,500,000 guarantee issued and outstanding (balance about \$950,000)

2004 - \$4,000,000 Bridge loan issued. Outstanding balance is \$1,540,000.

Skyway Wood Products (Eastwood Furniture): (outstanding assistance \$377,000)

1997 - \$384,000 loan and a \$532,000 forgivable loan from the CFB Chatham Redevelopment Fund. This company has been closed. The \$137,000 balance of the Loan and the unforgiven portion of the forgivable loan, estimated to be \$240,000, should be repaid by the Atcon Group.

ARVIN: (outstanding assistance \$350,000)

2000 - \$400,000 forgivable loan (not fully advanced). This is in connection with the renovations to the former TechSea building. The company has moved its production equipment into the building and is starting to create the 80 required jobs. The long delay in the move and job creation results from the devastating effects of the closure of COM DEV in Moncton, which was Arvins biggest customer.

Envirem Technologies: (Outstanding assistance \$16,000)

2001 - \$100,000 loan and a contribution of 100 acres of land at CFB Chatham. Agreement being met. Loan balance about \$16,000.

Atcon Group

2000 - \$50,000 grant cost sharing of bid preparation.

Nelson Venture Capital

\$210,000 venture capital loan made to the employees of Nelson Forest Products. Atcon assumed this liability and it has been repaid.

Nutritec (outstanding assistance \$750,000)

A \$100,000 loan has been made to Nutritec Inc., which is a joint venture between Atcon and Couvoir Westco. 2007 - \$650,000 repayable loan was made to Nutritec.

Atcon Industrial Services (outstanding assistance \$6,310,000)

2008 - \$3,060,000 forgivable loan

2008 - \$3,250,000 repayable loan

2008 - \$1,190,000 contribution from RDC

Atcon Holdings (outstanding assistance \$13,362,845)

2008 - \$13,362,845 loan guarantee

Total outstanding assistance to the group is approximately \$23,600,000.

Atcon Holdings Inc.
Consolidated Statement of Earnings and Retained Earnings
(Unaudited)

	39 weeks ended					4 weeks ended				
	October 25, 2008 Act	% of sales	October 27 2007 Act	% of sales	Act vs Prior Year Var B(W)	October 25, 2008 Act	% of sales	October 27 2007 Act	% of sales	Act vs Prior Year Var B(W)
Net revenues	\$213,304,119	100.0%	\$ 213,925,950	100.0%	\$ (621,831)	\$24,441,283	100.0%	\$ 42,302,233	100.0%	\$ (17,860,950)
Direct expenses	125,348,655	58.8%	124,091,845	58.0%	(1,256,809)	14,871,653	60.8%	27,680,424	65.4%	12,808,771
Wages, salaries and benefits	58,238,756	27.3%	59,296,482	27.7%	1,057,726	7,483,857	30.6%	11,835,728	28.0%	4,351,871
	183,587,411	86.1%	183,388,328	85.7%	(199,083)	22,355,510	91.5%	39,516,152	93.4%	17,160,643
Gross margin	29,716,708	13.9%	30,537,622	14.3%	(820,914)	2,085,773	8.5%	2,786,080	6.6%	(700,308)
General and administrative expenses	9,860,725	4.6%	7,469,071	3.5%	(2,391,654)	1,204,933	4.9%	(2,211,373)	-5.2%	(3,416,306)
Earnings before interest, income taxes, depreciation and amortization	19,855,983	9.3%	23,068,551	10.8%	(3,212,568)	880,840	3.6%	4,997,453	11.8%	(4,116,613)
Depreciation and amortization	3,007,494	1.4%	4,617,857	2.2%	1,610,363	293,524	1.2%	496,594	1.2%	203,070
Earnings from operations	16,848,489	7.9%	18,450,694	8.6%	(1,602,205)	587,316	2.4%	4,500,859	10.6%	(3,913,543)
Interest and bank charges	2,925,063		1,818,299		(1,106,765)	(56,935)		324,781		381,715
Exchange loss (gain) on long term debt	-		(444,441)		(444,441)	-		-		-
Interest on long term debt	3,925,397		4,965,452		1,040,055	589,763		535,705		(54,058)
	6,850,460		6,339,309		(511,151)	532,828		860,486		327,657
Earnings (loss) before income taxes and equity in earnings of companies subject to significant influence	9,998,029		12,111,385		(2,113,356)	54,487		3,640,373		(3,585,886)
Income taxes										
Current	2,589,668		4,182,799		(1,593,131)	(315,083)		1,027,925		(1,343,008)
Future	(442,500)		712,683		(1,155,183)	(62,617)		353,975		(416,592)
	2,147,168		4,895,482		2,748,314	(377,700)		1,381,900		1,759,600
Earnings (loss) before equity in earnings of companies subject to significant influence	7,850,861		7,215,903		634,958	432,187		2,258,473		(1,826,286)
Equity in earnings of companies subject to significant influence	(459,752)		3,860,363		(4,320,115)	(600,752)		822,158		(1,422,910)
Net earnings	\$ 7,391,109		\$ 11,076,267		\$ (3,685,157)	\$ (168,565)		\$ 3,080,632		\$ (3,249,197)
Retained earnings, beginning of period	\$ 35,691,282		\$ 34,923,732		\$ 767,550	\$43,210,956		\$ 42,919,355		\$ 291,589
Net earnings	7,391,109		11,076,267		(3,685,157)	(168,565)		3,080,632		(3,249,197)
Dividends	(40,000)		-		(40,000)	-		-		-
Retained earnings, end of period	\$ 43,042,391		\$ 45,999,998		\$ (2,957,607)	\$43,042,391		\$ 45,999,998		\$ (2,957,607)

Segment summary

	Actual			Actual	
	Rev	EBITDA		Rev	EBITDA
Construction	\$194,526,460	\$20,010,080		\$23,822,601	\$ 929,131
Wood	2,935,885	(2,865,596)		37,260	(197,160)
Environmental	8,101,612	1,056,476		405,940	68,571
Steel	21,865,864	617,740		2,063,643	215,301
Corporate	(14,125,702)	1,037,283		(1,888,162)	(135,103)
Total	\$213,304,119	\$19,855,983		\$24,441,283	\$ 880,840

See Exhibit

Atcon Holdings Inc.
Consolidated Balance Sheet

(Unaudited)

October 25,
2008

January 26,
2008

Assets

Current

Short term deposit	\$ -	\$ 309,469
Receivables	70,248,449	41,648,479
Inventories	41,126,614	52,813,183
Other current assets	12,517,000	-
Prepaid expenses	16,649,289	9,138,841
	<u>140,541,351</u>	<u>103,909,973</u>

Receivable from related parties, non-interest bearing

no set terms of repayment	11,300,576	10,636,977
Accrued investment tax credits	5,498,764	5,041,533
Property and equipment	61,608,590	55,460,479
Future income tax	-	1,430,877
Investment in SLAM Exploration Ltd.	69,931	69,931
Patents and trademarks	4,376	4,791
Investment in Brunway	1,848,223	12,393,920
Deferred start-up costs	169,512	210,378
Deferred finance charges	799,189	1,265,415
Goodwill	232,047	232,047

	<u>\$ 222,072,559</u>	<u>\$ 190,656,319</u>
--	-----------------------	-----------------------

Liabilities

Current

Bank indebtedness	\$ 4,380,951	\$ 754,324
Lines of credit	32,775,189	38,134,868
Payables and accruals	76,929,028	48,093,669
Income taxes payable	2,840,799	285,435
Repayable advances	37,900	90,400
Future income taxes, net	5,929,396	7,513,396
Current portion of long term debt	4,347,843	7,055,176
	<u>127,241,106</u>	<u>101,927,267</u>

Long term liabilities

	550,359	608,982
Long term debt	20,701,211	15,256,330
	<u>148,492,676</u>	<u>117,792,579</u>

Deferred government assistance

	9,297,157	5,376,104
Future income taxes	(289,376)	-
Subordinated debt	20,000,000	30,000,000
Minority interest	965,595	1,232,261

Shareholder's equity

Capital stock	564,115	564,115
Retained earnings	43,042,391	35,691,260
	<u>43,606,506</u>	<u>36,255,375</u>

	<u>\$ 222,072,558</u>	<u>\$ 190,656,319</u>
--	-----------------------	-----------------------

Atcon Holdings Inc.

Consolidated Statement of Cash Flows

(Unaudited)

39 weeks ended

39 weeks ended
October 25,
2008

4 weeks ended
October 25,
2008

Cash derived from (applied to)

Operations

Net income	\$ 5,991,109	\$ (568,565)
Equity in earnings of associated company	776,046	917,046
Depreciation	2,691,200	(22,770)
Loss on disposal of assets	(568,470)	-
Deferred finance charges	466,226	50,544
Future income taxes	(442,500)	(62,617)
	<u>8,913,611</u>	<u>313,639</u>

Change in

Trade receivables	(26,326,697)	11,138,128
Holdbacks	(5,144,662)	(1,141,517)
Insurance receivable	(365,072)	(504,952)
Inventories	12,191,523	11,895,098
Prepays	(7,510,448)	768,860
Other current assets	(12,517,000)	(12,517,000)
Accrued investment tax credits	(431,477)	(124,200)
Payables and accruals	29,463,196	(6,209,442)
Related party trade receivables and payables	(409,832)	(470,365)
Other liabilities	(111,197)	(505,664)
Income taxes payable	<u>2,955,364</u>	<u>84,918</u>
	<u>707,311</u>	<u>2,727,502</u>

Investing

Purchase of

Total property and equipment	(11,029,539)	(1,401,792)
Deferred costs	40,728	4,191
Investments	10,395,413	-
Proceeds from sale of assets	<u>2,251,641</u>	<u>-</u>
	<u>1,658,243</u>	<u>(1,397,601)</u>

Financing

Proceeds from the issuance of long term debt	7,261,975	1,016,302
Repayment of long term debt	(14,340,243)	(308,253)
Increase in line of credit	(2,420,254)	(4,069,552)
Proceeds from issuance of common shares	376,290	(8,834)
Dividends paid	(40,000)	-
Redemption of preference shares	(266,666)	-
Deferred government assistance	4,086,547	124,211
Advances to parent company, net	<u>(649,831)</u>	<u>487,379</u>
	<u>(5,992,183)</u>	<u>(2,758,747)</u>

Net increase in cash

(3,626,629) (1,428,845)

Cash (bank indebtedness)

Beginning of period	(754,323)	(2,952,107)
End of year	<u>\$ (4,380,952)</u>	<u>\$ (4,380,952)</u>

Atcon Holdings Inc.
Interim Statement of Earnings and Retained Earnings

	Rolling YTD													FY 2010
	Month Jan09	Month Feb09	Month Mar09	Month Apr09	Month May09	Month Jun09	Month Jul09	Month Aug09	Month Sep09	Month Oct09	Month Nov09	Month Dec09	Month Jan10	
Net revenues	\$ 8,741,439	\$ 15,926,900	\$ 21,220,900	\$ 24,086,000	\$ 18,630,400	\$ 32,807,400	\$ 37,707,800	\$ 36,688,700	\$ 26,457,800	\$ 26,553,900	\$ 17,646,400	\$ 10,683,900	\$ 10,027,900	\$ 278,438,000
Direct expenses	2,682,797	7,399,159	10,661,259	12,468,309	9,797,929	17,815,544	20,918,144	20,118,168	14,441,669	13,870,144	8,871,464	5,338,519	4,962,309	146,752,718
Wages, salaries and benefits	3,749,275	6,781,540	6,741,540	7,321,350	5,739,203	9,195,750	10,011,315	9,582,518	7,426,355	8,337,900	5,740,775	3,657,300	3,513,090	83,458,645
	6,432,072	13,190,699	17,402,799	19,779,659	15,537,132	27,011,294	30,929,459	30,100,687	21,868,034	22,308,044	14,612,239	8,995,919	8,475,398	230,211,362
Gross margin	2,309,367	2,738,201	3,818,101	4,306,341	3,093,269	5,795,106	6,778,341	6,588,014	4,989,766	4,245,856	3,034,161	1,687,981	1,552,502	48,226,638
General and administrative expenses	1,147,092	686,762	703,492	703,492	744,762	815,892	815,892	895,162	957,892	967,892	1,048,912	1,017,892	1,017,892	10,485,936
Earnings before interest, income taxes, depreciation and amortization	1,162,275	2,049,439	3,114,609	3,602,849	2,348,506	4,980,214	5,862,449	5,692,851	3,621,874	3,277,964	1,985,249	670,089	534,610	37,740,702
Depreciation and amortization	299,765	325,308	269,119	274,311	347,726	290,588	298,727	377,314	314,798	325,513	393,385	328,109	328,109	3,873,007
Earnings from operations	862,511	1,724,131	2,845,490	3,328,538	2,000,780	4,689,626	5,553,722	5,315,538	3,307,075	2,952,451	1,581,864	341,980	206,501	33,867,695
Interest and bank charges	350,612	434,643	346,108	317,745	432,946	364,985	309,744	295,430	353,806	378,891	387,964	371,593	389,397	4,385,252
Exchange gain & unusual item	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest on long term debt	795,060	575,958	538,979	538,373	577,696	542,651	540,906	579,130	542,664	543,033	585,447	547,815	548,673	6,660,296
Capital tax	1,155,872	1,010,601	887,087	856,118	1,010,613	807,636	850,551	874,560	896,470	921,924	974,411	919,409	936,070	11,045,548
Earnings before equity in earnings of associated company and taxes	(293,161)	713,530	1,958,403	2,472,420	990,168	3,781,990	4,713,071	4,440,978	2,410,605	2,030,527	617,453	(577,425)	(729,569)	22,822,147
Income and capital taxes	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Current	10,289	119,392	160,064	223,934	198,383	449,200	531,746	507,230	293,139	244,432	131,383	(20,491)	(65,277)	2,751,955
Future	(121,684)	100,525	458,252	558,883	110,037	753,498	967,918	905,294	469,566	396,639	57,492	(173,054)	(177,001)	4,438,149
	(111,395)	219,908	618,256	782,717	308,419	1,201,698	1,499,664	1,412,524	762,805	641,072	188,875	(193,545)	(242,278)	7,200,115
Earnings before equity in earnings of associated company	(181,766)	493,622	1,340,147	1,689,703	681,748	2,580,292	3,213,407	3,028,453	1,647,800	1,389,456	428,578	(383,884)	(487,291)	15,922,032
Equity in earnings of associated company	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	300,000
Net earnings	\$ (156,766)	\$ 518,622	\$ 1,365,147	\$ 1,714,703	\$ 706,748	\$ 2,605,292	\$ 3,238,407	\$ 3,053,453	\$ 1,672,800	\$ 1,414,456	\$ 453,578	\$ (358,884)	\$ (462,291)	\$ 15,922,032
Retained earnings, beginning of period	\$ 43,923,317	\$ 43,726,569	\$ 44,245,191	\$ 45,510,338	\$ 47,325,041	\$ 48,031,790	\$ 50,537,082	\$ 53,875,489	\$ 56,928,942	\$ 58,501,742	\$ 60,016,198	\$ 60,469,776	\$ 60,110,892	\$ 43,726,569
Net earnings	(156,766)	518,622	1,365,147	1,714,703	706,748	2,605,292	3,238,407	3,053,453	1,672,800	1,414,456	453,578	(358,884)	(462,291)	15,922,032
Dividends	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Retained earnings, end of period	\$ 43,766,551	\$ 44,245,191	\$ 45,610,338	\$ 47,325,041	\$ 48,031,790	\$ 50,637,082	\$ 53,875,489	\$ 56,928,942	\$ 58,501,742	\$ 60,016,198	\$ 60,469,776	\$ 60,110,892	\$ 59,648,601	\$ 59,648,601

SCHEDULE 2D


Date:	February 6, 2009	New Brunswick Nouveau Brunswick		Inter - Office Memo Note Interservices	
	Name and Title / Nom et titre	Department and Branch / Ministère et direction	Telephone / Téléphone	Reference / Référence	
To: À:	NBIDB	BNB			
From: De:	John Watt				
cc: Cc:	John Rosengren, Bernie Fontaine, Joe Allen				
Subject: Objet:	Atcon Holdings Inc.				

FOR DISCUSSION

The following is a summarization of the major issues with respect to Atcon's \$50 million financing request.

- A. In support of the request for \$10 million to complete the Steel Beam plant in Miramichi, the company has provided a detailed list of building costs totaling \$7 million, and a detailed equipment list totaling \$5 million, indicating a need for \$12 million.
- B. The requested working capital guarantee of \$20 million, is to be used for any required bid/security deposits (\$5 million) and \$15 million for general working capital purposes to enable the company to take advantage of future opportunities. The information provided by the company shows \$15.2 million in accounts payable which are over 90 days old at October 25/08. (the requested \$20 million may be inadequate).
- C. The Atcon group currently has a combined operating credit facility of \$40 million which, in our opinion, would support annual sales levels of approximately \$150 million. The company is operating in the \$250-270 million range and is constantly experiencing working capital shortages. This is partially reflected by the fact that \$15 million of the company's accounts payable are over 90 days old.
- D. There is an unconfirmed suspicion that the company has been, or soon will be, placed on a COD basis by its larger suppliers (steel, fuel, etc.).
- E. The McKenna Gale sub-debt agreements have numerous restrictions, permitting McKenna Gale to refuse to permit any capital or operating borrowing, and capital expenditures. Any financial participation by the province, even by way of guarantee would be subordinate to the security held by McKenna Gale, and would require the consent of McKenna Gale. The agreement is presently in default, and the loans could be called.
- F. \$10 million of the sub-debt is scheduled for repayment in February, 2010. The company will be unable to make the payment.
- G. Any financing provided to the company while the McKenna Gale agreement remains in force and in default would be in immediate jeopardy in the event the sub-debt loans were called.

Exhibit #15

December 7, 2010

 Blackwell Court Reporting

- H. The company, over the past 4 years, has generated in the range of \$800 million in total revenues with a resulting aggregate net profit of about \$16 million. Annual depreciation is about \$6 million, and annual long term debt and capital lease payments are about \$6 million. Based on this past performance, the company's ability to repay any substantially increased debt load is very questionable.
- I. The company has provided a list of unbilled contracts in hand totaling \$270 million, of which about \$160 million would be done in 2009. This represents about 60% of the company's projected revenues for 2009. BNB has not verified the existence of these contracts with the exception of the Deh Cho Bridge contract.
- J. Consolidated financial statements for the company's fiscal year ended January 31, 2009 are expected to show minimal profits or a small loss. Audited financial statements will not be available until the 1st week of April/09. No assistance should be provided without audited statements.
- K. If the company is unable to arrange a large financing package by early April/09, loans in default will be moved into current liabilities and the audited statements will contain a number of qualifications which will severely impact the company's credit rating and ability to secure contracts.
- L. Approximately 85% of the company's revenues are derived from construction activities. BNB has not, to date, provided assistance to the construction sector. Providing assistance would represent a significant change in policy and would set a precedent which could result in financing requests from other construction companies.
- M. Notwithstanding all of the foregoing, the Atcon group employed 1751 NB residents in 2008 (of which 700 worked outside NB) with a \$64 million payroll, and is anticipating the same employment levels in 2009. BNB has not verified the employment levels.
- N. The company has stated that, if the assistance is not provided, Atcon will be downsized dramatically, probably to about \$70 million in annual revenues rather than \$270. A more realistic scenario would be the complete failure of the company.
- O. The company has a track record of failing to honour financing agreements with the province, and a track record of incurring substantial expenses without having arranged appropriate financing. If the requested financing were to be provided, any attempts to restrict or control the company's behaviour would probably be ignored.

John

COMPANY Atcon Holdings Inc.
Location: Miramichi

Employment: Present: 2100
New Incremental: 0

Nature of Business: Heavy metal manufacturing, machining and fabrication, plywood manufacturing and construction.

Request from the Company: \$50 million Guarantee

Financial Officer: John Watt

Departmental Recommendation: Deferred

Board Recommendation: The Members of the Board concurred with the Departmental Recommendation. *pc*

Ben L. Lids

CHAIRPERSON

Dee Lids

SECRETARY

BBP

ADVICE TO THE MINISTER

NEW BRUNSWICK INDUSTRIAL DEVELOPMENT BOARD

MINUTES

A regular meeting of the New Brunswick Industrial Development Board was held on Monday, March 16, 2009 at 3:30 p.m.

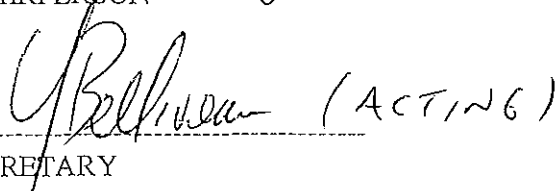
Those members present were: Dick Burgess (Chairperson)
Tom Reid (part of the meeting)
Jim McKay
Bill Levesque
Phil LePage

With a quorum of members present, the meeting was declared properly constituted. The meeting was chaired by Dick Burgess with secretary support provided by Julie Gionet. The agenda for the present meeting was approved as presented.

.....

<u>COMPANY</u>	<u>Atcon Holdings Inc.</u>
Location:	Miramichi
Employment:	Present: 2100 New Incremental: 0
Nature of Business:	Heavy metal manufacturing, machining and fabrication, plywood manufacturing and construction.
Request from the Company:	\$50,000,000 Loan guarantees
Financial Officer:	John Watt
Departmental Recommendation:	Rejection
Board Recommendation:	The Members of the Board concurred with the Departmental Recommendation.


CHAIRPERSON


SECRETARY

COMPANY Atcon Holdings Inc.
Location: Miramichi
Employment: Present: 2100
New Incremental: 0
Nature of Business: Heavy metal manufacturing, machining and fabrication, plywood manufacturing and construction.
Request from the Company: \$50 million Guarantee
Financial Officer: John Watt
Departmental Recommendation: Deferred
Board Recommendation: The Members of the Board concurred with the Departmental Recommendation. *pe*

Ben L. Litch

CHAIRPERSON

Dee L. Litch

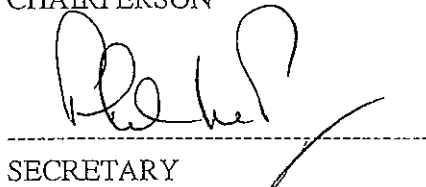
SECRETARY

pe BLP

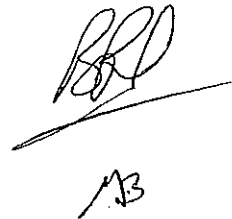
COMPANY Atcon Holdings Inc.
Location: Miramichi
Employment: Present: 2100
New Incremental: 0
Nature of Business: Heavy metal manufacturing, machining and fabrication, plywood manufacturing and construction
Request from the Company: \$50,000,000 in Loan guarantees
\$10,000,000 to complete the expansion of Atcon Industrial services
\$20,000,000 to retire existing subordinated debt
\$20,000,000 to increase its existing operating line of credit
Financial Officer: John Watt
Departmental Recommendation: Rejection
Board Recommendation: Deferred PL



CHAIRPERSON



SECRETARY


MB



4300 - A129

Exhibit #30
December 7, 2010

Blackwell Court Reporting

March 27, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance

Please be advised that your request for financial assistance has been assessed and approval has been given to provide a loan guarantee ("Guarantee") to a Canadian financial institution ("Bank") to secure a loan for Atcon Holdings Inc. (hereinafter referred to as "Company" or "Atcon") in an amount of up to \$10,000,000 (the "Loan").

The proceeds of the Loan shall be used to complete capital expenditures at Atcon Industrial Services Inc.'s Miramichi facilities, and for no other purpose.

Term and payment:

The Minister's liability under the Guarantee shall not exceed the lesser of \$10,000,000 or the principal balance of the Loan outstanding on the date upon which the Bank makes demand for payment.

The Loan shall be repaid by way of 72 equal principal payments, commencing on the first day of the 25th month following the issuance of the Guarantee.

Interest on or with respect to the Loan is not guaranteed.

The Guarantee shall be issued to the Bank at such time as the required legal agreements have been executed by all parties, the Minister has received satisfactory legal opinions with respect to the agreements, and the Company has met all of the prior conditions of this offer.



The Guarantee shall terminate eight years following the date upon which it is issued or on such earlier date upon which the Loan is repaid in full, unless on or before such date(s), the Bank has issued a demand for payment under the Guarantee.

Upon receipt of a demand for payment from the Bank, the Minister shall forthwith make payment to the Bank and the Bank shall forthwith assign its security to the Minister.

Security and Documentation:

As security for the Loan to be provided under the Guarantee, the Bank shall hold security by way of a charge over all assets and undertakings of Atcon Industrial Services Inc., together with a guarantee from Atcon Group Inc., and a guarantee from Robert Tozer.

In addition, the Company shall provide Indemnity Agreements to the Minister, in a form satisfactory to the Minister from the Company and each of the shareholders.

Prior Conditions:

Prior to the issuance of the Guarantee, the Company shall provide the Minister with:

- a) an undertaking that the guaranteed Loan will be used to complete capital expenditures at Atcon Industrial Services Inc.'s Miramichi facilities and for no other purpose;
- b) an agreement by the Company that in the event of any payment being made by the Minister under the Guarantee, the amount so paid shall become an obligation of Atcon Holdings Inc. to be repaid upon demand;
- c) evidence that the Company is in compliance with environmental regulations and that any applicable property tax payments are current;
- d) payment to the Minister of a guarantee charge of 1.5 percent of the amount of the Minister's maximum liability under the Guarantee concurrently with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee;
- e) evidence that Atcon has arranged an External Board of Directors or Advisory Board acceptable to the Minister which shall include not less than one member appointed by the Minister, with the frequency of meetings to be held being satisfactory to the Minister;
- f) evidence that Atcon has completed an external review by a firm satisfactory to the Minister of the Company's assets (including receivables, inventories, and "other current assets") indicating results satisfactory to the Minister;

- g) evidence that Atcon has made such administrative changes as are necessary to ensure that any contracts in excess of \$5,000,000 are reviewed by the Advisory Board prior to acceptance, and that the Vice President of Finance recommends acceptance of the contract based on anticipated profit margin and the availability of the working capital required to undertake the contract;
- h) an undertaking to sell or otherwise monetize the highway maintenance contract not later than September 30, 2009, with all proceeds being applied to the Minister's guaranteed loans;
- i) an undertaking to sell or otherwise monetize the Swedish assets as quickly as possible, but in no event later than July 31, 2010, with all proceeds being applied to the Minister's guaranteed loans. The Minister is to be provided with monthly progress reports from the firm which has been engaged to sell the assets, and the company shall undertake not to reject any offer of \$18 million or more;
- j) an agreement from Atcon Group to acknowledge that, while Atcon Construction Inc. may bid on PNB contracts during the duration of the guarantee(s), those bids will be disqualified if there is a bid from another NB company. Additionally, Atcon Construction Inc. shall agree not to seek or accept sub-contracts on projects funded by PNB, save and excepting the supply of aggregate and asphalt in volumes not to exceed the volumes sold during the company's previous fiscal year; and
- k) a resolution plan acceptable to the Minister with respect to all outstanding payables owed to New Brunswick companies and the Province of New Brunswick.

Restrictions:

As long as the Guarantee is outstanding, the Company shall not, without the prior written approval of the Minister or the Minister's representative:

- a) make or incur commitments for capital expenditures in excess of \$1,000,000 in any fiscal year whether by purchase or lease;
- b) declare or pay dividends on its capital stock, redeem any preferred or common shares, pay any management fees or bonuses, repay any shareholders' loans or pay interest on same, make any inter company loans or repayment of same except in the normal course of business, nor make loans to, investments in or guarantees on behalf of others;
- c) permit any transactions between the Company and affiliates of the Company unless such transactions are at fair market value and the Minister or a representative of the Minister is accorded the opportunity to review the financial records of the companies involved upon request;

- d) sell or encumber assets in excess of \$500,000 annually except in the ordinary course of business;
- e) allow a change in ownership of the controlling shares of the Company; nor
- f) engage the services of any consultant or consulting firm not at arm's length with the Company.

Compliance:

As long as any amount of the Guarantee is outstanding, the Company shall comply with all of the terms and conditions of the assistance and in addition shall provide the information requested and otherwise comply with the requirements contained in Schedule "A" to this letter.

Other Requirements:

As long as the Guarantee is outstanding, the Company agrees, unless otherwise approved by the Minister or the Minister's representative, to:

- a) be permitted to repay the guaranteed Loan in whole or in part at any time without penalty from the Minister;
- b) maintain fire insurance in an amount no less than 80 percent of replacement value or 80 percent of the cash value of the Company's assets as reasonably determined by the Company, or an amount satisfactory to the Minister or the Minister's representative;
- c) allow a nominee of the Minister to attend any and all meetings of the Company's Board of Directors or Advisory Board should the Minister so request, such nominee to act in an advisory capacity only, without voting privileges, but entitled to all notices of meetings of the Board;
- d) pay and satisfy all taxes, rates, and public charges, due or falling due with respect to the Company and operate the business in a good and businesslike manner;
- e) pay within 30 days of receipt of an invoice from the Minister all costs, charges and expenses incurred by the Minister in association with preparation, execution, filing of documents, protection of security, searching of titles, together with interest thereon for past due amounts at the rate of 10.69 percent per annum until so repaid;
- f) where possible in terms of cost, quality and availability, review and consider the use of New Brunswick goods and services in relation to this project;
- g) make all reasonable efforts to ensure that employees of the Company are provided the opportunity to upgrade skills through training or education;

- h) meet all federal and provincial environmental regulations;
- i) adhere to generally accepted accounting principles (GAAP) in any financial reporting to the Minister; and
- j) pay an annual charge of 1.5 percent of the Minister's maximum liability under the Guarantee concurrent with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee.

Issuance of the Guarantee:

The Guarantee offered herein shall not be issued until all terms and conditions identified herein, together with such other terms and conditions as may be specified by the Minister, have been embodied in formal agreements and security documents satisfactory to the Minister.

Required Information:

Mr. John Watt of the Business Financial Support Division of the Department of Business New Brunswick will be responsible for the formal documentation and in order that we may proceed with this documentation, the following items should be submitted to the Department:

- a) a certified copy of the Articles of Incorporation and Articles of Amendment of the Company and any corporate shareholder;
- b) a certified copy of the Company's Borrowing By-Law and the by-law respecting signing officers;
- c) a Certificate of Incumbency of the officers of the Corporation indicating those who will be signing the documents;
- d) the name and address of the Company's solicitor;
- e) a list of all existing shareholders and their number of shares;
- f) a list of all existing shareholder loans; and
- g) a statement of any outstanding or pending legal actions against the Company or any of its shareholders, and the current status of any such actions.

If, in the opinion of the Minister, the Company's situation changes in a materially adverse manner or the Company is unable to fulfill the Prior Conditions of this offer within 90 days of the date of acceptance of this offer, the offer may be withdrawn.

Would you please sign and return the attached copy of this letter where indicated below to signify your agreement with the terms and conditions herein. Please note that, if the offer is not accepted within 30 days of the date of this letter, it will expire and any form of conditional acceptance will render this offer null and void.

Yours truly,

A handwritten signature in black ink, appearing to read 'Greg Byrne', with a long horizontal line extending to the right.

Greg Byrne, Q.C.
Minister

cc: John Watt

Hereby accepted this _____ day of _____, 2009

Atcon Holdings Inc.

Schedule A**Atcon Holdings Inc.****Account Monitoring Plan**

- Submit to the Minister annually, budgets and cash flow projections no later than the end of the prior fiscal year.
- Provide the Minister with the audited annual financial statements of the Company within 120 days of the close of its financial year, and such other statements as the Minister may from time to time require.
- Provide the Minister with a copy of the auditor's management letter and the response to that letter.
- Provide the Minister with the Company's quarterly financial statements with comparison to budget, including profit and loss statements and balance sheets, all in formats satisfactory to the Minister, 30 days after each quarter end.
- Provide the Minister with reports on orders booked, sales levels and employment levels, should the Minister so request.
- Allow a representative of the Minister access to all the facilities of the Company and the books and records of the Company.

March 27, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance

Please be advised that your request for financial assistance has been assessed and approval has been given to provide a loan guarantee ("Guarantee") to Atcon Holdings Inc. (hereinafter referred to as "Company" or "Atcon") in an amount of up to \$20,000,000 relating to a revolving working capital loan of up to \$60,000,000 ("Loan") provided or to be provided by a Canadian financial institution ("Bank"). This offer of guarantee is in respect of your business activities headquartered in Miramichi, New Brunswick.

The Guarantee shall relate to a revolving working capital loan in an amount not to exceed \$60,000,000, and the Guarantee shall apply only to amounts outstanding in excess of the lesser of \$40,000,000 or the amount secured under the Bank's current margin formula. Amounts advanced and outstanding from time to time in excess of these amounts are defined as the "Guaranteed Portion of the Loan".

The liability of the Minister under the Guarantee shall be limited to the lesser of:

- a) \$20,000,000;
- b) the balance of the Guaranteed Portion of the Loan at the time the Bank makes a demand for payment of the Loan; and
- c) the balance of the Guaranteed Portion of the Loan remaining unpaid after the Bank has realized on its security as set forth hereinafter.



Term and Repayment:

The Guarantee shall reduce by \$5,000,000 on June 30th 2012, and shall terminate not later than the 30th day of June, 2013.

Security and Documentation:

As security for the Guarantee, the Company shall provide the Minister with an agreement by the Bank receiving the Guarantee to hold, and during the continuance of the Guarantee continue to hold, firstly for its own account and secondly for the account of the Minister:

- a) a first charge on the Company's inventories and accounts receivable;
- b) an assignment of any and all accounts receivable insurance proceeds;
- c) a Subordination Agreement and Agreement of Postponement of Claim on all shareholders' loans.
- d) a guarantee from Atcon Group Inc.; and
- e) a guarantee from Robert Tozer applicable to the Guaranteed Portion of the Loan.

In addition, the Company shall provide Indemnity Agreements to the Minister, in a form satisfactory to the Minister from the Company and each of the shareholders.

It is a condition of the Minister that the above-noted security, together with all other security held or to be held as security for the Loan must be realized upon by the Bank prior to any payment by the Minister under the Guarantee.

In the event that the Bank makes a demand for payment of the Loan, the proceeds of the realization of the security shall be applied as follows:

- 1) firstly against costs and expenses, including interest;
- 2) secondly against the unguaranteed portion of the Loan ; and
- 3) thirdly against the Guaranteed Portion of the Loan.

The Guarantee shall be issued to the Bank at such time as the required legal agreements have been executed by all parties, the Minister has received satisfactory legal opinions with respect to the agreements, and the Company has met all of the prior conditions of this offer.

Prior Conditions:

Prior to the issuance of the Guarantee, the Company shall provide the Minister with:

- a) an undertaking that the guaranteed Loan will be used for the working capital requirements of the Company and for no other purpose;
- b) an agreement by the Company that in the event of any payment being made by the Minister under the Guarantee, the amount so paid shall become an obligation of Atcon Holdings Inc. to be repaid upon demand;
- c) evidence that the Company is in compliance with environmental regulations and that any applicable property tax payments are current;
- d) payment to the Minister of a guarantee charge of 1.5 percent of the amount of the Minister's maximum liability under the Guarantee concurrently with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee;
- e) evidence that Atcon has arranged an External Board of Directors or Advisory Board acceptable to the Minister which shall include not less than one member appointed by the Minister, with the frequency of meetings to be held being satisfactory to the Minister;
- f) evidence that Atcon has completed an external review by a firm satisfactory to the Minister of the Company's assets (including receivables, inventories, and "other current assets") indicating results satisfactory to the Minister;
- g) evidence that Atcon has made such administrative changes as are necessary to ensure that any contracts in excess of \$5,000,000 are reviewed by the Advisory Board prior to acceptance, and that the Vice President of Finance recommends acceptance of the contract based on anticipated profit margin and the availability of the working capital required to undertake the contract;
- h) an undertaking to sell or otherwise monetize the highway maintenance contract not later than September 30, 2009, with all proceeds being applied to the Minister's guaranteed loans;
- i) an undertaking to sell or otherwise monetize the Swedish assets as quickly as possible, but in no event later than July 31, 2010, with all proceeds being applied to the Minister's guaranteed loans. The Minister is to be provided with monthly progress reports from the firm which has been engaged to sell the assets, and the company shall undertake not to reject any offer of \$18 million or more;
- j) an agreement from Atcon Group to acknowledge that, while Atcon Construction Inc. may bid on PNB contracts during the duration of the guarantee(s), those bids will be disqualified if there is a bid from another NB company. Additionally, Atcon Construction

Inc. shall agree not to seek or accept sub-contracts on projects funded by PNB, save and excepting the supply of aggregate and asphalt in volumes not to exceed the volumes sold during the company's previous fiscal year; and

- k) a resolution plan acceptable to the Minister with respect to all outstanding payables owed to New Brunswick companies and the Province of New Brunswick.

Restrictions:

As long as the Guarantee is outstanding, the Company shall not, without the prior written approval of the Minister or the Minister's representative:

- a) make or incur commitments for capital expenditures in excess of \$1,000,000 in any fiscal year whether by purchase or lease;
- b) declare or pay dividends on its capital stock, redeem any preferred or common shares, pay any management fees or bonuses, repay any shareholders' loans or pay interest on same, make any inter company loans or repayment of same except in the normal course of business, nor make loans to, investments in or guarantees on behalf of others;
- c) permit any transactions between the Company and affiliates of the Company unless such transactions are at fair market value and the Minister or a representative of the Minister is accorded the opportunity to review the financial records of the companies involved upon request;
- d) sell or encumber assets in excess of \$500,000 annually except in the ordinary course of business;
- e) allow a change in ownership of the controlling shares of the Company; nor
- f) engage the services of any consultant or consulting firm not at arm's length with the Company.

Compliance:

As long as any amount of the Guarantee is outstanding, the Company shall comply with all of the terms and conditions of the assistance and in addition shall provide the information requested and otherwise comply with the requirements contained in Schedule "A" to this letter.

Other Requirements:

As long as the Guarantee is outstanding, the Company agrees, unless otherwise approved by the Minister or the Minister's representative, to:

- a) be permitted to repay the guaranteed Loan in whole or in part at any time without penalty from the Minister;

- b) maintain fire insurance in an amount no less than 80 percent of replacement value or 80 percent of the cash value of the Company's assets as reasonably determined by the Company, or an amount satisfactory to the Minister or the Minister's representative;
- c) allow a nominee of the Minister to attend any and all meetings of the Company's Board of Directors or Advisory Board should the Minister so request, such nominee to act in an advisory capacity only, without voting privileges, but entitled to all notices of meetings of the Board;
- d) pay and satisfy all taxes, rates, and public charges, due or falling due with respect to the Company and operate the business in a good and businesslike manner;
- e) pay within 30 days of receipt of an invoice from the Minister all costs, charges and expenses incurred by the Minister in association with preparation, execution, filing of documents, protection of security, searching of titles, together with interest thereon for past due amounts at the rate of 10.69 percent per annum until so repaid;
- f) where possible in terms of cost, quality and availability, review and consider the use of New Brunswick goods and services in relation to this project;
- g) make all reasonable efforts to ensure that employees of the Company are provided the opportunity to upgrade skills through training or education;
- h) meet all federal and provincial environmental regulations;
- i) adhere to generally accepted accounting principles (GAAP) in any financial reporting to the Minister; and
- j) pay an annual charge of 1.5 percent of the Minister's maximum liability under the Guarantee concurrent with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee.

Issuance of the Guarantee:

The Guarantee offered herein shall not be issued until all terms and conditions identified herein, together with such other terms and conditions as may be specified by the Minister, have been embodied in formal agreements and security documents satisfactory to the Minister.

Required Information:

Mr. John Watt of the Business Financial Support Division of the Department of Business New Brunswick will be responsible for the formal documentation and in order that we may proceed with this documentation, the following items should be submitted to the Department:

- a) a certified copy of the Articles of Incorporation and Articles of Amendment of the Company and any corporate shareholder;
- b) a certified copy of the Company's Borrowing By-Law and the by-law respecting signing officers;
- c) a Certificate of Incumbency of the officers of the Corporation indicating those who will be signing the documents;
- d) the name and address of the Company's solicitor;
- e) a list of all existing shareholders and their number of shares;
- f) a list of all existing shareholder loans; and
- g) a statement of any outstanding or pending legal actions against the Company or any of its shareholders, and the current status of any such actions.

If, in the opinion of the Minister, the Company's situation changes in a materially adverse manner or the Company is unable to fulfill the Prior Conditions of this offer within 90 days of the date of acceptance of this offer, the offer may be withdrawn.

Would you please sign and return the attached copy of this letter where indicated below to signify your agreement with the terms and conditions herein. Please note that, if the offer is not accepted within 30 days of the date of this letter, it will expire and any form of conditional acceptance will render this offer null and void.

Yours truly,



Greg Byrne, Q.C.
Minister

cc: John Watt

Hereby accepted this _____ day of _____, 2009

Atcon Holdings Inc.

Schedule A**Atcon Holdings Inc.****Account Monitoring Plan**

- Submit to the Minister annually, budgets and cash flow projections no later than the end of the prior fiscal year.
- Provide the Minister with the audited annual financial statements of the Company within 120 days of the close of its financial year, and such other statements as the Minister may from time to time require.
- Provide the Minister with a copy of the auditor's management letter and the response to that letter.
- Provide the Minister with the Company's quarterly financial statements with comparison to budget, including profit and loss statements and balance sheets, all in formats satisfactory to the Minister, 30 days after each quarter end.
- Provide the Minister with reports on orders booked, sales levels and employment levels, should the Minister so request.
- Allow a representative of the Minister access to all the facilities of the Company and the books and records of the Company.

March 27, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance

Please be advised that your request for financial assistance has been assessed and approval has been given to provide a loan guarantee ("Guarantee") to a Canadian financial institution ("Bank") to secure a loan for Atcon Holdings Inc. (hereinafter referred to as "Company" or "Atcon") in an amount of up to \$20,000,000 (the "Loan").

The proceeds of the Loan shall be used to repay existing subordinated debt, and for no other purpose.

Term and payment:

The Minister's liability under the Guarantee shall not exceed \$20,000,000.

Interest on or with respect to the Loan is not guaranteed.

The Guarantee shall be issued to the Bank at such time as the required legal agreements have been executed by all parties, the Minister has received satisfactory legal opinions with respect to the agreements, and the Company has met all of the prior conditions of this offer.

The Guarantee shall terminate on July 31, 2010 or on such earlier date upon which the Loan is repaid in full, unless on or before such date(s), the Bank has issued a demand for payment under the Guarantee.



Upon receipt of a demand for payment from the Bank, the Minister shall forthwith make payment to the Bank and the Bank shall forthwith assign its security to the Minister.

Security and Documentation:

As security for the Loan to be provided under the Guarantee, the Bank shall hold security in form and substance the same as that security presently held by the existing subordinated debt lenders, including but not limited to a first charge security positions over Atcon Group Inc.'s assets in Sweden, and its interest in the Brunway highway maintenance contract.

The Bank shall also hold a guarantee from Atcon Group Inc., and a guarantee from Robert Tozer.

In addition, the Company shall provide Indemnity Agreements to the Minister, in a form satisfactory to the Minister from the Company and each of the shareholders.

Prior Conditions:

Prior to the issuance of the Guarantee, the Company shall provide the Minister with:

- a) an undertaking that the guaranteed Loan will be used to repay existing subordinated debt and for no other purpose;
- b) an agreement by the Company that in the event of any payment being made by the Minister under the Guarantee, the amount so paid shall become an obligation of Atcon Holdings Inc. to be repaid upon demand;
- c) evidence that the Company is in compliance with environmental regulations and that any applicable property tax payments are current;
- d) payment to the Minister of a guarantee charge of 1.5 percent of the amount of the Minister's maximum liability under the Guarantee concurrently with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee;
- e) evidence that Atcon has arranged an External Board of Directors or Advisory Board acceptable to the Minister which shall include not less than one member appointed by the Minister, with the frequency of meetings to be held being satisfactory to the Minister;
- f) evidence that Atcon has completed an external review by a firm satisfactory to the Minister of the Company's assets (including receivables, inventories, and "other current assets") indicating results satisfactory to the Minister;

- g) evidence that Atcon has made such administrative changes as are necessary to ensure that any contracts in excess of \$5,000,000 are reviewed by the Advisory Board prior to acceptance, and that the Vice President of Finance recommends acceptance of the contract based on anticipated profit margin and the availability of the working capital required to undertake the contract;
- h) an undertaking to sell or otherwise monetize the highway maintenance contract not later than September 30, 2009, with all proceeds being applied to the Minister's guaranteed loans;
- i) an undertaking to sell or otherwise monetize the Swedish assets as quickly as possible, but in no event later than July 31, 2010, with all proceeds being applied to the Minister's guaranteed loans. The Minister is to be provided with monthly progress reports from the firm which has been engaged to sell the assets, and the company shall undertake not to reject any offer of \$18 million or more;
- j) an agreement from Atcon Group to acknowledge that, while Atcon Construction Inc. may bid on PNB contracts during the duration of the guarantee(s), those bids will be disqualified if there is a bid from another NB company. Additionally, Atcon Construction Inc. shall agree not to seek or accept sub-contracts on projects funded by PNB, save and excepting the supply of aggregate and asphalt in volumes not to exceed the volumes sold during the company's previous fiscal year; and
- k) a resolution plan acceptable to the Minister with respect to all outstanding payables owed to New Brunswick companies and the Province of New Brunswick.

Restrictions:

As long as the Guarantee is outstanding, the Company shall not, without the prior written approval of the Minister or the Minister's representative:

- a) make or incur commitments for capital expenditures in excess of \$1,000,000 in any fiscal year whether by purchase or lease;
- b) declare or pay dividends on its capital stock, redeem any preferred or common shares, pay any management fees or bonuses, repay any shareholders' loans or pay interest on same, make any inter company loans or repayment of same except in the normal course of business, nor make loans to, investments in or guarantees on behalf of others;
- c) permit any transactions between the Company and affiliates of the Company unless such transactions are at fair market value and the Minister or a representative of the Minister is accorded the opportunity to review the financial records of the companies involved upon request;
- d) sell or encumber assets in excess of \$500,000 annually except in the ordinary course of business;

- e) allow a change in ownership of the controlling shares of the Company; nor
- f) engage the services of any consultant or consulting firm not at arm's length with the Company.

Compliance:

As long as any amount of the Guarantee is outstanding, the Company shall comply with all of the terms and conditions of the assistance and in addition shall provide the information requested and otherwise comply with the requirements contained in Schedule "A" to this letter.

Other Requirements:

As long as the Guarantee is outstanding, the Company agrees, unless otherwise approved by the Minister or the Minister's representative, to:

- a) be permitted to repay the guaranteed Loan in whole or in part at any time without penalty from the Minister;
- b) maintain fire insurance in an amount no less than 80 percent of replacement value or 80 percent of the cash value of the Company's assets as reasonably determined by the Company, or an amount satisfactory to the Minister or the Minister's representative;
- c) allow a nominee of the Minister to attend any and all meetings of the Company's Board of Directors or Advisory Board should the Minister so request, such nominee to act in an advisory capacity only, without voting privileges, but entitled to all notices of meetings of the Board;
- d) pay and satisfy all taxes, rates, and public charges, due or falling due with respect to the Company and operate the business in a good and businesslike manner;
- e) pay within 30 days of receipt of an invoice from the Minister all costs, charges and expenses incurred by the Minister in association with preparation, execution, filing of documents, protection of security, searching of titles, together with interest thereon for past due amounts at the rate of 10.69 percent per annum until so repaid;
- f) where possible in terms of cost, quality and availability, review and consider the use of New Brunswick goods and services in relation to this project;
- g) make all reasonable efforts to ensure that employees of the Company are provided the opportunity to upgrade skills through training or education;
- h) meet all federal and provincial environmental regulations;

- i) adhere to generally accepted accounting principles (GAAP) in any financial reporting to the Minister; and
- j) pay an annual charge of 1.5 percent of the Minister's maximum liability under the Guarantee concurrent with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee.

Issuance of the Guarantee:

The Guarantee offered herein shall not be issued until all terms and conditions identified herein, together with such other terms and conditions as may be specified by the Minister, have been embodied in formal agreements and security documents satisfactory to the Minister.

Required Information:

Mr. John Watt of the Business Financial Support Division of the Department of Business New Brunswick will be responsible for the formal documentation and in order that we may proceed with this documentation, the following items should be submitted to the Department:

- a) a certified copy of the Articles of Incorporation and Articles of Amendment of the Company and any corporate shareholder;
- b) a certified copy of the Company's Borrowing By-Law and the by-law respecting signing officers;
- c) a Certificate of Incumbency of the officers of the Corporation indicating those who will be signing the documents;
- d) the name and address of the Company's solicitor;
- e) a list of all existing shareholders and their number of shares;
- f) a list of all existing shareholder loans; and
- g) a statement of any outstanding or pending legal actions against the Company or any of its shareholders, and the current status of any such actions.

If, in the opinion of the Minister, the Company's situation changes in a materially adverse manner or the Company is unable to fulfill the Prior Conditions of this offer within 90 days of the date of acceptance of this offer, the offer may be withdrawn.

Would you please sign and return the attached copy of this letter where indicated below to signify your agreement with the terms and conditions herein. Please note that, if the offer is not accepted within 30 days of the date of this letter, it will expire and any form of conditional acceptance will render this offer null and void.

Yours truly,

A handwritten signature in black ink, appearing to read 'Greg Byrne', with a long horizontal line extending to the right.

Greg Byrne, Q.C.
Minister

cc: John Watt

Hereby accepted this _____ day of _____, 2009

Atcon Holdings Inc.

Schedule A**Atcon Holdings Inc.****Account Monitoring Plan**

- Submit to the Minister annually, budgets and cash flow projections no later than the end of the prior fiscal year.
- Provide the Minister with the audited annual financial statements of the Company within 120 days of the close of its financial year, and such other statements as the Minister may from time to time require.
- Provide the Minister with a copy of the auditor's management letter and the response to that letter.
- Provide the Minister with the Company's quarterly financial statements with comparison to budget, including profit and loss statements and balance sheets, all in formats satisfactory to the Minister, 30 days after each quarter end.
- Provide the Minister with reports on orders booked, sales levels and employment levels, should the Minister so request.
- Allow a representative of the Minister access to all the facilities of the Company and the books and records of the Company.

April 24, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance

Please be advised that your request for financial assistance has been assessed and approval has been given to provide a loan guarantee ("Guarantee") to a Canadian financial institution ("Bank") to secure a loan for Atcon Holdings Inc. (hereinafter referred to as "Company" or "Atcon") in an amount of up to \$20,000,000 (the "Loan"). This offer is replacement of and not in addition to an offer dated March 27, 2009 relating to a \$20,000,000 loan guarantee and renders that previous offer null and void.

The proceeds of the Loan shall be used to repay existing subordinated debt, and for no other purpose.

Term and payment:

The Minister's liability under the Guarantee shall not exceed \$20,000,000.

Interest on or with respect to the Loan is not guaranteed.

The Guarantee shall be issued to the Bank at such time as the required legal agreements have been executed by all parties, the Minister has received satisfactory legal opinions with respect to the agreements, and the Company has met all of the prior conditions of this offer.

The Guarantee shall terminate on July 31, 2010 or on such earlier date upon which the Loan is repaid in full, unless on or before such date(s), the Bank has issued a demand for payment under the Guarantee.



Upon receipt of a demand for payment from the Bank, the Minister shall forthwith make payment to the Bank and the Bank shall forthwith assign its security to the Minister.

Security and Documentation:

As security for the Loan to be provided under the Guarantee, the Bank shall hold security in form and substance the same as that security presently held by the existing subordinated debt lenders, including but not limited to a first charge security positions over Atcon Group Inc.'s assets in Sweden, and its interest in the Brunway highway maintenance contract.

The Bank shall also hold a guarantee from Atcon Group Inc., and a guarantee from Robert Tozer (which guarantee shall not attach to the guarantor's principal residence).

In addition, the Company shall provide Indemnity Agreements to the Minister, in a form satisfactory to the Minister from the Company and each of the shareholders.

Prior Conditions:

Prior to the issuance of the Guarantee, the Company shall provide the Minister with:

- a) an undertaking that the guaranteed Loan will be used to repay existing subordinated debt and for no other purpose;
- b) an agreement by the Company that in the event of any payment being made by the Minister under the Guarantee, the amount so paid shall become an obligation of Atcon Holdings Inc. to be repaid upon demand;
- c) evidence that the Company is in compliance with environmental regulations and that any applicable property tax payments are current;
- d) payment to the Minister of a guarantee charge of 1.5 percent of the amount of the Minister's maximum liability under the Guarantee concurrently with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee;
- e) an undertaking that Atcon shall, within 90 days of the acceptance of this offer, arrange an External Board of Directors or Advisory Board acceptable to the Minister which shall include not less than one member appointed by the Minister, with the frequency of meetings to be held being satisfactory to the Minister;
- f) evidence that Atcon has completed an external review by a firm satisfactory to the Minister of the Company's assets (including receivables, inventories, and "other current assets") indicating results satisfactory to the Minister;

- g) evidence that Atcon has made such administrative changes as are necessary to ensure that any contracts in excess of \$5,000,000 are reviewed by the Advisory Board prior to acceptance, and that the Vice President of Finance recommends acceptance of the contract based on anticipated profit margin and the availability of the working capital required to undertake the contract;
- h) an undertaking to sell or otherwise monetize the highway maintenance contract not later than September 30, 2009, with all proceeds being applied to the Minister's guaranteed loans;
- i) an undertaking to sell or otherwise monetize the Swedish assets as quickly as possible, but in no event later than July 31, 2010, with all proceeds being applied to the Minister's guaranteed loans. The Minister is to be provided with monthly progress reports from the firm which has been engaged to sell the assets, and the company shall undertake not to reject any offer of \$18 million or more;
- j) an agreement from Atcon Group to acknowledge that, while Atcon Construction Inc. may bid on PNB contracts during the duration of the guarantee(s), those bids will be disqualified if there is a bid from another NB company. Additionally, Atcon Construction Inc. shall agree not to seek or accept sub-contracts on projects funded by PNB, save and excepting the supply of aggregate and asphalt in volumes not to exceed the volumes sold during the company's previous fiscal year; and
- k) a resolution plan acceptable to the Minister with respect to all outstanding payables owed to New Brunswick companies and the Province of New Brunswick.

Restrictions:

As long as the Guarantee is outstanding, the Company shall not, without the prior written approval of the Minister or the Minister's representative:

- a) make or incur commitments for capital expenditures in excess of \$1,000,000 in any fiscal year whether by purchase or lease;
- b) declare or pay dividends on its capital stock, redeem any preferred or common shares, pay any management fees or bonuses, repay any shareholders' loans or pay interest on same, make any inter company loans or repayment of same except in the normal course of business, nor make loans to, investments in or guarantees on behalf of others;
- c) permit any transactions between the Company and affiliates of the Company unless such transactions are at fair market value and the Minister or a representative of the Minister is accorded the opportunity to review the financial records of the companies involved upon request;
- d) sell or encumber assets in excess of \$500,000 annually except in the ordinary course of business;

- e) allow a change in ownership of the controlling shares of the Company; nor
- f) engage the services of any consultant or consulting firm not at arm's length with the Company.

Compliance:

As long as any amount of the Guarantee is outstanding, the Company shall comply with all of the terms and conditions of the assistance and in addition shall provide the information requested and otherwise comply with the requirements contained in Schedule "A" to this letter.

Other Requirements:

As long as the Guarantee is outstanding, the Company agrees, unless otherwise approved by the Minister or the Minister's representative, to:

- a) be permitted to repay the guaranteed Loan in whole or in part at any time without penalty from the Minister;
- b) maintain fire insurance in an amount no less than 80 percent of replacement value or 80 percent of the cash value of the Company's assets as reasonably determined by the Company, or an amount satisfactory to the Minister or the Minister's representative;
- c) allow a nominee of the Minister to attend any and all meetings of the Company's Board of Directors or Advisory Board should the Minister so request, such nominee to act in an advisory capacity only, without voting privileges, but entitled to all notices of meetings of the Board;
- d) pay and satisfy all taxes, rates, and public charges, due or falling due with respect to the Company and operate the business in a good and businesslike manner;
- e) pay within 30 days of receipt of an invoice from the Minister all costs, charges and expenses incurred by the Minister in association with preparation, execution, filing of documents, protection of security, searching of titles, together with interest thereon for past due amounts at the rate of 10.69 percent per annum until so repaid;
- f) where possible in terms of cost, quality and availability, review and consider the use of New Brunswick goods and services in relation to this project;
- g) make all reasonable efforts to ensure that employees of the Company are provided the opportunity to upgrade skills through training or education;
- h) meet all federal and provincial environmental regulations;

- i) adhere to generally accepted accounting principles (GAAP) in any financial reporting to the Minister; and
- j) pay an annual charge of 1.5 percent of the Minister's maximum liability under the Guarantee concurrent with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee.

Issuance of the Guarantee:

The Guarantee offered herein shall not be issued until all terms and conditions identified herein, together with such other terms and conditions as may be specified by the Minister, have been embodied in formal agreements and security documents satisfactory to the Minister.

Required Information:

Mr. John Watt of the Business Financial Support Division of the Department of Business New Brunswick will be responsible for the formal documentation and in order that we may proceed with this documentation, the following items should be submitted to the Department:

- a) a certified copy of the Articles of Incorporation and Articles of Amendment of the Company and any corporate shareholder;
- b) a certified copy of the Company's Borrowing By-Law and the by-law respecting signing officers;
- c) a Certificate of Incumbency of the officers of the Corporation indicating those who will be signing the documents;
- d) the name and address of the Company's solicitor;
- e) a list of all existing shareholders and their number of shares;
- f) a list of all existing shareholder loans; and
- g) a statement of any outstanding or pending legal actions against the Company or any of its shareholders, and the current status of any such actions.

If, in the opinion of the Minister, the Company's situation changes in a materially adverse manner or the Company is unable to fulfill the Prior Conditions of this offer within 90 days of the date of acceptance of this offer, the offer may be withdrawn.

Would you please sign and return the attached copy of this letter where indicated below to signify your agreement with the terms and conditions herein. Please note that, if the offer is not accepted within 30 days of the date of this letter, it will expire and any form of conditional acceptance will render this offer null and void.

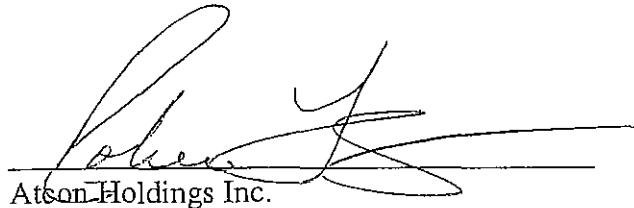
Yours truly,



Greg Byrne, Q.C.
Minister

cc: John Watt

Hereby accepted this 29 day of April, 2009



Atson Holdings Inc.

Schedule A**Atcon Holdings Inc.****Account Monitoring Plan**

- Submit to the Minister annually, budgets and cash flow projections no later than the end of the prior fiscal year.
- Provide the Minister with the audited annual financial statements of the Company within 120 days of the close of its financial year, and such other statements as the Minister may from time to time require.
- Provide the Minister with a copy of the auditor's management letter and the response to that letter.
- Provide the Minister with the Company's quarterly financial statements with comparison to budget, including profit and loss statements and balance sheets, all in formats satisfactory to the Minister, 30 days after each quarter end.
- Provide the Minister with reports on orders booked, sales levels and employment levels, should the Minister so request.
- Allow a representative of the Minister access to all the facilities of the Company and the books and records of the Company.

April 24, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance

Please be advised that your request for financial assistance has been assessed and approval has been given to provide a loan guarantee ("Guarantee") to a Canadian financial institution ("Bank") to secure a loan for Atcon Holdings Inc. (hereinafter referred to as "Company" or "Atcon") in an amount of up to \$10,000,000 (the "Loan"). This offer is in replacement of and not in addition to an offer dated March 27, 2009 relating to a \$10,000,000 loan guarantee and renders that previous offer null and void.

The proceeds of the Loan shall be used to complete capital expenditures at Atcon Industrial Services Inc.'s Miramichi facilities, and for no other purpose.

Term and payment:

The Minister's liability under the Guarantee shall not exceed the lesser of \$10,000,000 or the principal balance of the Loan outstanding on the date upon which the Bank makes demand for payment.

The Loan shall be repaid by way of 72 equal principal payments, commencing on the first day of the 25th month following the issuance of the Guarantee.

Interest on or with respect to the Loan is not guaranteed.

The Guarantee shall be issued to the Bank at such time as the required legal agreements have been executed by all parties, the Minister has received satisfactory legal opinions with respect to the agreements, and the Company has met all of the prior conditions of this offer.

The Guarantee shall terminate eight years following the date upon which it is issued or on such earlier date upon which the Loan is repaid in full, unless on or before such date(s), the Bank has issued a demand for payment under the Guarantee.

Upon receipt of a demand for payment from the Bank, the Minister shall forthwith make payment to the Bank and the Bank shall forthwith assign its security to the Minister.

Security and Documentation:

As security for the Loan to be provided under the Guarantee, the Bank shall hold security by way of a charge over all assets and undertakings of Atcon Industrial Services Inc., together with a guarantee from Atcon Group Inc., and a guarantee from Robert Tozer (which guarantee shall not attach to the guarantor's principal residence).

In addition, the Company shall provide Indemnity Agreements to the Minister, in a form satisfactory to the Minister from the Company and each of the shareholders.

Prior Conditions:

Prior to the issuance of the Guarantee, the Company shall provide the Minister with:

- a) an undertaking that the guaranteed Loan will be used to complete capital expenditures at Atcon Industrial Services Inc.'s Miramichi facilities and for no other purpose;
- b) an agreement by the Company that in the event of any payment being made by the Minister under the Guarantee, the amount so paid shall become an obligation of Atcon Holdings Inc. to be repaid upon demand;
- c) evidence that the Company is in compliance with environmental regulations and that any applicable property tax payments are current;
- d) payment to the Minister of a guarantee charge of 1.5 percent of the amount of the Minister's maximum liability under the Guarantee concurrently with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee;
- e) an undertaking that Atcon shall, within 90 days of the acceptance of this offer, arrange an External Board of Directors or Advisory Board acceptable to the Minister which shall include not less than one member appointed by the Minister, with the frequency of meetings to be held being satisfactory to the Minister;
- f) evidence that Atcon has completed an external review by a firm satisfactory to the Minister of the Company's assets (including receivables, inventories, and "other current assets") indicating results satisfactory to the Minister;

- g) evidence that Atcon has made such administrative changes as are necessary to ensure that any contracts in excess of \$5,000,000 are reviewed by the Advisory Board prior to acceptance, and that the Vice President of Finance recommends acceptance of the contract based on anticipated profit margin and the availability of the working capital required to undertake the contract;
- h) an undertaking to sell or otherwise monetize the highway maintenance contract not later than September 30, 2009, with all proceeds being applied to the Minister's guaranteed loans;
- i) an undertaking to sell or otherwise monetize the Swedish assets as quickly as possible, but in no event later than July 31, 2010, with all proceeds being applied to the Minister's guaranteed loans. The Minister is to be provided with monthly progress reports from the firm which has been engaged to sell the assets, and the company shall undertake not to reject any offer of \$18 million or more;
- j) an agreement from Atcon Group to acknowledge that, while Atcon Construction Inc. may bid on PNB contracts during the duration of the guarantee(s), those bids will be disqualified if there is a bid from another NB company. Additionally, Atcon Construction Inc. shall agree not to seek or accept sub-contracts on projects funded by PNB, save and excepting the supply of aggregate and asphalt in volumes not to exceed the volumes sold during the company's previous fiscal year; and
- k) a resolution plan acceptable to the Minister with respect to all outstanding payables owed to New Brunswick companies and the Province of New Brunswick.

Restrictions:

As long as the Guarantee is outstanding, the Company shall not, without the prior written approval of the Minister or the Minister's representative:

- a) make or incur commitments for capital expenditures in excess of \$1,000,000 in any fiscal year whether by purchase or lease;
- b) declare or pay dividends on its capital stock, redeem any preferred or common shares, pay any management fees or bonuses, repay any shareholders' loans or pay interest on same, make any inter company loans or repayment of same except in the normal course of business, nor make loans to, investments in or guarantees on behalf of others;
- c) permit any transactions between the Company and affiliates of the Company unless such transactions are at fair market value and the Minister or a representative of the Minister is accorded the opportunity to review the financial records of the companies involved upon request;

- d) sell or encumber assets in excess of \$500,000 annually except in the ordinary course of business;
- e) allow a change in ownership of the controlling shares of the Company; nor
- f) engage the services of any consultant or consulting firm not at arm's length with the Company.

Compliance:

As long as any amount of the Guarantee is outstanding, the Company shall comply with all of the terms and conditions of the assistance and in addition shall provide the information requested and otherwise comply with the requirements contained in Schedule "A" to this letter.

Other Requirements:

As long as the Guarantee is outstanding, the Company agrees, unless otherwise approved by the Minister or the Minister's representative, to:

- a) be permitted to repay the guaranteed Loan in whole or in part at any time without penalty from the Minister;
- b) maintain fire insurance in an amount no less than 80 percent of replacement value or 80 percent of the cash value of the Company's assets as reasonably determined by the Company, or an amount satisfactory to the Minister or the Minister's representative;
- c) allow a nominee of the Minister to attend any and all meetings of the Company's Board of Directors or Advisory Board should the Minister so request, such nominee to act in an advisory capacity only, without voting privileges, but entitled to all notices of meetings of the Board;
- d) pay and satisfy all taxes, rates, and public charges, due or falling due with respect to the Company and operate the business in a good and businesslike manner;
- e) pay within 30 days of receipt of an invoice from the Minister all costs, charges and expenses incurred by the Minister in association with preparation, execution, filing of documents, protection of security, searching of titles, together with interest thereon for past due amounts at the rate of 10.69 percent per annum until so repaid;
- f) where possible in terms of cost, quality and availability, review and consider the use of New Brunswick goods and services in relation to this project;
- g) make all reasonable efforts to ensure that employees of the Company are provided the opportunity to upgrade skills through training or education;

- h) meet all federal and provincial environmental regulations;
- i) adhere to generally accepted accounting principles (GAAP) in any financial reporting to the Minister; and
- j) pay an annual charge of 1.5 percent of the Minister's maximum liability under the Guarantee concurrent with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee.

Issuance of the Guarantee:

The Guarantee offered herein shall not be issued until all terms and conditions identified herein, together with such other terms and conditions as may be specified by the Minister, have been embodied in formal agreements and security documents satisfactory to the Minister.

Required Information:

Mr. John Watt of the Business Financial Support Division of the Department of Business New Brunswick will be responsible for the formal documentation and in order that we may proceed with this documentation, the following items should be submitted to the Department:

- a) a certified copy of the Articles of Incorporation and Articles of Amendment of the Company and any corporate shareholder;
- b) a certified copy of the Company's Borrowing By-Law and the by-law respecting signing officers;
- c) a Certificate of Incumbency of the officers of the Corporation indicating those who will be signing the documents;
- d) the name and address of the Company's solicitor;
- e) a list of all existing shareholders and their number of shares;
- f) a list of all existing shareholder loans; and
- g) a statement of any outstanding or pending legal actions against the Company or any of its shareholders, and the current status of any such actions.

If, in the opinion of the Minister, the Company's situation changes in a materially adverse manner or the Company is unable to fulfill the Prior Conditions of this offer within 90 days of the date of acceptance of this offer, the offer may be withdrawn.

Would you please sign and return the attached copy of this letter where indicated below to signify your agreement with the terms and conditions herein. Please note that, if the offer is not accepted within 30 days of the date of this letter, it will expire and any form of conditional acceptance will render this offer null and void.

Yours truly,



Greg Byrne, Q.C.
Minister

cc: John Watt

Hereby accepted this 29 day of April, 2009


Atcon Holdings Inc.

Schedule A**Atcon Holdings Inc.****Account Monitoring Plan**

- Submit to the Minister annually, budgets and cash flow projections no later than the end of the prior fiscal year.
- Provide the Minister with the audited annual financial statements of the Company within 120 days of the close of its financial year, and such other statements as the Minister may from time to time require.
- Provide the Minister with a copy of the auditor's management letter and the response to that letter.
- Provide the Minister with the Company's quarterly financial statements with comparison to budget, including profit and loss statements and balance sheets, all in formats satisfactory to the Minister, 30 days after each quarter end.
- Provide the Minister with reports on orders booked, sales levels and employment levels, should the Minister so request.
- Allow a representative of the Minister access to all the facilities of the Company and the books and records of the Company.

April 24, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance

Please be advised that your request for financial assistance has been assessed and approval has been given to provide a loan guarantee ("Guarantee") to Atcon Holdings Inc. (hereinafter referred to as "Company" or "Atcon") in an amount of up to \$20,000,000 relating to a working capital term loan of up to \$20,000,000 ("Loan") provided or to be provided by a Canadian financial institution ("Bank"). This offer of guarantee is in respect of your business activities headquartered in Miramichi, New Brunswick. This offer is in replacement of and not in addition to an offer dated March 27, 2009 relating to a guarantee of a portion on a revolving operating loan and renders that previous offer null and void.

The liability of the Minister under the Guarantee shall be limited to the lesser of:

- a) \$20,000,000;
- b) the principal balance of the Loan at the time the Bank makes a demand for payment of the Loan; and
- c) the principal balance of the Loan remaining unpaid after the Bank has realized on its security as set forth hereinafter.

Interest on or with respect to the Loan is not guaranteed.

Term and Repayment:

The Guarantee shall reduce by \$5,000,000 on June 30th 2012, and shall terminate not later than the 30th day of June, 2013.



Security and Documentation:

As security for the Guarantee, the Company shall provide the Minister with an agreement by the Bank receiving the Guarantee to hold, and during the continuance of the Guarantee continue to hold, firstly for its own account and secondly for the account of the Minister:

- a) a first charge on the Company's inventories and accounts receivable;
- b) an assignment of any and all accounts receivable insurance proceeds;
- c) a charge on all other assets and undertakings of the Company;
- d) a Subordination Agreement and Agreement of Postponement of Claim on all shareholders' loans.
- e) a guarantee from Atcon Group Inc.; and
- f) a guarantee from Robert Tozer applicable to the Guaranteed Loan, which guarantee shall not attach to the guarantor's principal residence.

In addition, the Company shall provide Indemnity Agreements to the Minister, in a form satisfactory to the Minister from the Company and each of the shareholders.

It is a condition of the Minister that the above-noted security, together with all other security held or to be held as security for the Loan must be realized upon by the Bank prior to any payment by the Minister under the Guarantee.

In the event that the Bank makes a demand for payment of the Loan, the proceeds of the realization of the security shall be applied as follows:

- 1) firstly against costs and expenses, including interest;
- 2) secondly against the indebtedness of the Company to the Bank other than the Guaranteed Loan ; and
- 3) thirdly against the Guaranteed Loan.

Notwithstanding the foregoing, the Bank may, following a demand for payment of all indebtedness of the Company to the Bank, including the Loan, request payment from the Minister of the amount of the Guarantee. In the event of such a request, the Minister shall make payment within 15 working days and the Bank shall, following realizing upon the Security to satisfy the Bank's outstanding loans, assign the remaining security to the Minister.

The Guarantee shall be issued to the Bank at such time as the required legal agreements have been executed by all parties, the Minister has received satisfactory legal opinions with respect to the agreements, and the Company has met all of the prior conditions of this offer.

Prior Conditions:

Prior to the issuance of the Guarantee, the Company shall provide the Minister with:

- a) an undertaking that the guaranteed Loan will be used for the working capital requirements of the Company and for no other purpose;
- b) an agreement by the Company that in the event of any payment being made by the Minister under the Guarantee, the amount so paid shall become an obligation of Atcon Holdings Inc. to be repaid upon demand;
- c) evidence that the Company is in compliance with environmental regulations and that any applicable property tax payments are current;
- d) payment to the Minister of a guarantee charge of 1.5 percent of the amount of the Minister's maximum liability under the Guarantee concurrently with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee;
- e) an undertaking that Atcon shall, within 90 days of the acceptance of this offer, arrange an External Board of Directors or Advisory Board acceptable to the Minister which shall include not less than one member appointed by the Minister, with the frequency of meetings to be held being satisfactory to the Minister;
- f) evidence that Atcon has completed an external review by a firm satisfactory to the Minister of the Company's assets (including receivables, inventories, and "other current assets") indicating results satisfactory to the Minister;
- g) evidence that Atcon has made such administrative changes as are necessary to ensure that any contracts in excess of \$5,000,000 are reviewed by the Advisory Board prior to acceptance, and that the Vice President of Finance recommends acceptance of the contract based on anticipated profit margin and the availability of the working capital required to undertake the contract;
- h) an undertaking to sell or otherwise monetize the highway maintenance contract not later than September 30, 2009, with all proceeds being applied to the Minister's guaranteed loans;
- i) an undertaking to sell or otherwise monetize the Swedish assets as quickly as possible, but in no event later than July 31, 2010, with all proceeds being applied to the Minister's guaranteed loans. The Minister is to be provided with monthly progress reports from the firm which has been engaged to sell the assets, and the company shall undertake not to reject any offer of \$18 million or more;

- j) an agreement from Atcon Group to acknowledge that, while Atcon Construction Inc. may bid on PNB contracts during the duration of the guarantee(s), those bids will be disqualified if there is a bid from another NB company. Additionally, Atcon Construction Inc. shall agree not to seek or accept sub-contracts on projects funded by PNB, save and excepting the supply of aggregate and asphalt in volumes not to exceed the volumes sold during the company's previous fiscal year;
- k) a resolution plan acceptable to the Minister with respect to all outstanding payables owed to New Brunswick companies and the Province of New Brunswick; and
- l) evidence satisfactory to the Minister that the Bank of Nova Scotia will maintain the existing \$40,000,000 revolving credit facility under existing terms and conditions.

Restrictions:

As long as the Guarantee is outstanding, the Company shall not, without the prior written approval of the Minister or the Minister's representative:

- a) make or incur commitments for capital expenditures in excess of \$1,000,000 in any fiscal year whether by purchase or lease;
- b) declare or pay dividends on its capital stock, redeem any preferred or common shares, pay any management fees or bonuses, repay any shareholders' loans or pay interest on same, make any inter company loans or repayment of same except in the normal course of business, nor make loans to, investments in or guarantees on behalf of others;
- c) permit any transactions between the Company and affiliates of the Company unless such transactions are at fair market value and the Minister or a representative of the Minister is accorded the opportunity to review the financial records of the companies involved upon request;
- d) sell or encumber assets in excess of \$500,000 annually except in the ordinary course of business;
- e) allow a change in ownership of the controlling shares of the Company; nor
- f) engage the services of any consultant or consulting firm not at arm's length with the Company.

Compliance:

As long as any amount of the Guarantee is outstanding, the Company shall comply with all of the terms and conditions of the assistance and in addition shall provide the information requested and otherwise comply with the requirements contained in Schedule "A" to this letter.

Other Requirements:

As long as the Guarantee is outstanding, the Company agrees, unless otherwise approved by the Minister or the Minister's representative, to:

- a) be permitted to repay the guaranteed Loan in whole or in part at any time without penalty from the Minister;
- b) maintain fire insurance in an amount no less than 80 percent of replacement value or 80 percent of the cash value of the Company's assets as reasonably determined by the Company, or an amount satisfactory to the Minister or the Minister's representative;
- c) allow a nominee of the Minister to attend any and all meetings of the Company's Board of Directors or Advisory Board should the Minister so request, such nominee to act in an advisory capacity only, without voting privileges, but entitled to all notices of meetings of the Board;
- d) pay and satisfy all taxes, rates, and public charges, due or falling due with respect to the Company and operate the business in a good and businesslike manner;
- e) pay within 30 days of receipt of an invoice from the Minister all costs, charges and expenses incurred by the Minister in association with preparation, execution, filing of documents, protection of security, searching of titles, together with interest thereon for past due amounts at the rate of 10.69 percent per annum until so repaid;
- f) where possible in terms of cost, quality and availability, review and consider the use of New Brunswick goods and services in relation to this project;
- g) make all reasonable efforts to ensure that employees of the Company are provided the opportunity to upgrade skills through training or education;
- h) meet all federal and provincial environmental regulations;
- i) adhere to generally accepted accounting principles (GAAP) in any financial reporting to the Minister; and
- j) pay an annual charge of 1.5 percent of the Minister's maximum liability under the Guarantee concurrent with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee.

Issuance of the Guarantee:

The Guarantee offered herein shall not be issued until all terms and conditions identified herein, together with such other terms and conditions as may be specified by the Minister, have been embodied in formal agreements and security documents satisfactory to the Minister.

Required Information:

Mr. John Watt of the Business Financial Support Division of the Department of Business New Brunswick will be responsible for the formal documentation and in order that we may proceed with this documentation, the following items should be submitted to the Department:

- a) a certified copy of the Articles of Incorporation and Articles of Amendment of the Company and any corporate shareholder;
- b) a certified copy of the Company's Borrowing By-Law and the by-law respecting signing officers;
- c) a Certificate of Incumbency of the officers of the Corporation indicating those who will be signing the documents;
- d) the name and address of the Company's solicitor;
- e) a list of all existing shareholders and their number of shares;
- f) a list of all existing shareholder loans; and
- g) a statement of any outstanding or pending legal actions against the Company or any of its shareholders, and the current status of any such actions.

If, in the opinion of the Minister, the Company's situation changes in a materially adverse manner or the Company is unable to fulfill the Prior Conditions of this offer within 90 days of the date of acceptance of this offer, the offer may be withdrawn.

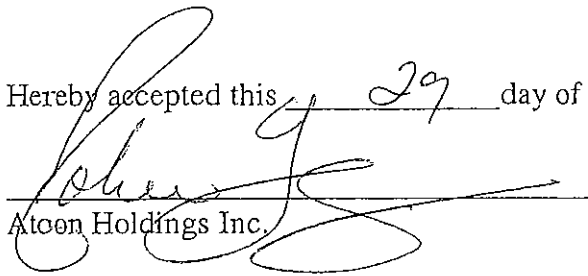
Would you please sign and return the attached copy of this letter where indicated below to signify your agreement with the terms and conditions herein. Please note that, if the offer is not accepted within 30 days of the date of this letter, it will expire and any form of conditional acceptance will render this offer null and void.

Yours truly,



Greg Byrne, Q.C.
Minister

Hereby accepted this 29 day of April, 2009



Atoon Holdings Inc.

Schedule A**Atcon Holdings Inc.****Account Monitoring Plan**

- Submit to the Minister annually, budgets and cash flow projections no later than the end of the prior fiscal year.
- Provide the Minister with the audited annual financial statements of the Company within 120 days of the close of its financial year, and such other statements as the Minister may from time to time require.
- Provide the Minister with a copy of the auditor's management letter and the response to that letter.
- Provide the Minister with the Company's quarterly financial statements with comparison to budget, including profit and loss statements and balance sheets, all in formats satisfactory to the Minister, 30 days after each quarter end.
- Provide the Minister with reports on orders booked, sales levels and employment levels, should the Minister so request.
- Allow a representative of the Minister access to all the facilities of the Company and the books and records of the Company.

ALAN R. GRAHAM

Atcon Management
624 Newcastle blvd. Miramichi N.B
E1V 2L3

Rexden N.B.
May 15th 2009

Attention Robbie Tazer

Dear Robbie

After much thought I wish to tender my resignation as a Director for Vamerply AB in Oltarbecken Sweden, effective today May 15 2009. I do this with much reservation as you and I have seen much success in Sweden from 2002 when you had the vision to take ownership of a bankrupt company half way around the world and turn it into the largest plywood producer in Sweden


The one hundred and fifty employees there have seen an uncertain future turned into a bright and secure employment opportunity producing the highest quality product in all of Europe.. Your leadership in turning this company into a real success story makes me proud to have been part of the team that has made it possible . As the financial statements for 2008/09 are not yet completed I will still sign off on them when they are completed by our Swedish auditors.

Again thank you for including me in this company's success and I wish to continue our close friendship with you and your family

Sincerely,


Alan R. Graham

Exhibit #42

 December 7, 2010

Blackwell Court Reporting





June 9, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance

I refer herein to three letters of offer dated April 24, 2009 regarding loan guarantees in the amounts of \$10,000,000, \$20,000,000 and \$20,000,000.

These offers contain conditions which restrict construction activities in New Brunswick by Atcon companies while the guarantees are in force (clause j) under the heading "Prior Conditions".

This letter is to confirm to you that, at such time as the two \$20,000,000 guarantees referred to above have been fully released to my satisfaction, this restriction will no longer apply.

I trust that this is satisfactory to you.

Yours truly,

A handwritten signature in black ink, appearing to read "Jack Keir".

Jack Keir
Acting Minister

Exhibit #46

December 7, 2010

A handwritten signature in black ink, appearing to read "Blackwell Court Reporting".

Blackwell Court Reporting

46

A handwritten signature in black ink, appearing to read "Blackwell Court Reporting".

Minister/Ministre

Business New Brunswick/Entreprises Nouveau-Brunswick

P.O. Box/C. P. 6000 Fredericton New Brunswick/Nouveau-Brunswick E3B 5H1 Canada Tel./Tél. (506) 453-5898 Fax/Téléc. (506) 453-5893

www.gnb.ca





June 9, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance


I refer herein to three letters of offer dated April 24, 2009 regarding loan guarantees in the amounts of \$10,000,000, \$20,000,000 and \$20,000,000.


The Prior Conditions contained in those letters are hereby amended as follows:

1) by deleting clause j) and replacing it with a revised clause j) to read:

"An agreement from Atcon Group Inc. that Atcon companies engaged in the construction sector (as hereinafter defined) may bid on PNB funded contracts excluding P3 projects while the financial assistance by way of loan guarantee(s) is in effect but that upon notification by PNB of a competitive bid from another New Brunswick company, the Atcon company shall withdraw its bid and remove itself from consideration for participation or other involvement in the project in question. This restriction and undertaking shall apply to contracts in which the Atcon company is a prime contractor or sub contractor but does not apply to contracts for the supply of aggregate and asphalt so long as the quantities and volumes do not exceed the quantities and volumes sold during that company's 2009 fiscal year.

Atcon Group Inc. further acknowledges that while Brunway Group or other joint venture involving Atcon companies may bid on P3 projects in New Brunswick, Atcon companies shall not perform construction sector work under the P3 project contract(s) without the express written consent of the Minister or the Minister's representative.

Exhibit #47
December 7, 2010

Blackwell Court Reporting

47


Minister/Ministre

Business New Brunswick/Entreprises Nouveau-Brunswick

P.O. Box/C. P. 6000 Fredericton New Brunswick/Nouveau-Brunswick E3B 5H1 Canada Tel./Tél. (506) 453-5898 Fax/Télé. (506) 453-5893

www.gnb.ca



"Atcon companies" includes any company, limited partnership, partnership or trust in which Atcon Group Inc., Atcon Holdings Inc. or Robert Tozer holds an equity position, has a contractual right to obtain an equity position or holds any beneficial right or interest whatsoever. "Construction sector" includes, but is not limited to, highway construction and paving."

Would you please sign and return the attached copy of this letter where indicated below to signify your agreement with the terms and conditions herein. Please note that, if the offer is not accepted within 30 days of the date of this letter, it will expire and any form of conditional acceptance will render this offer null and void.

Yours truly,



Jack Keir
Acting Minister

Hereby accepted this _____ day of _____, 2009

Atcon Holdings Inc.



626 Newcastle Blvd., Miramichi, NB, E1V 2L3
Tel.: 506-627-1222 Fax: 506-622-8392

info@atcongroup.com
www.atcongroup.com

June 11, 2009

Business New Brunswick
Attention John Watt

Re: Prior condition of a resolution plan acceptable to the Minister with respect to all outstanding payables owed to NB companies and the Province of NB.

Atcon is committed on making payment on all approved invoices payable to NB companies and the Province of New Brunswick to bring vendors within acceptable terms within 15 business days of funding of the proposed financing arrangement.

We are committed to providing significant payments to our suppliers – a draft listing of payments is attached. We hope this plan is found acceptable to the Minister.

If you have any questions or concerns please contact me directly.

Yours truly,

Katrina Donovan, CA, CBV
VP Finance and Administration

Exhibit #48

December 7, 2010

Blackwell Court Reporting

vendor	total	prov
\$20877 N.B.Inc.(Mecanig	\$12,129.60	NB
621617 NB Inc.	\$1,440.75	NB
A.L.P.A. Equipment Ltd.	\$27.19	NB
Absolute Cleaning	\$3,687.56	NB
Acadian Peat Moss	\$4,746.00	NB
Accurate Concrete Sawing	\$1,265.60	NB
Accurate Concrete Sawing	\$1,609.12	NB
Ace Leasing Ltd (Bathurs	\$7,163.21	NB
Ace Leasing Ltd.	\$2,214.80	NB
Ace Leasing Ltd.	\$7,659.04	NB
Acetox (1985) Ltd.	\$73.22	NB
Acklands-Grainger Inc.	\$365.78	NB
Admiral Building Mainten	\$701.73	NB
Admiral Building Mainten	\$4,210.38	NB
Advatek Systems Inc.	\$2,191.47	NB
Air Repair Sales & Servi	\$4,665.75	NB
Air Repair Sales & Servi	\$29,575.06	NB
All Air Ltd.	\$551.44	NB
Allison's Manufacturing L	\$3,203.86	NB
Alpa Equipment Ltd	\$1,118.91	NB
Al-Pack Enterprises Ltd.	\$11,558.47	NB
Andrew Hambrook	\$2,741.57	NB
Armour Transport LTD.	\$16,316.77	NB
Armstrong's Comm.	\$842.24	NB
Assumption Life	\$87,742.33	NB
AT Limited Partnership	\$33,727.32	NB
Atlantic Compressed Air	\$2,302.52	NB
Atlantic Industries Ltd.	\$44,680.00	NB
Atlantic Industries Ltd.	\$57,678.13	NB
Atlantic Tractors & Equi	\$620,000.00	NB
Atlantic Underground	\$13,234.65	NB
Auberge Bouctouche Inn	\$1,331.25	NB
Auberge Pres Du Lac Inn	\$23,082.90	NB
Babco Ltd.	\$545.47	NB
Babco Ltd.	\$8,962.03	NB
Bell Aliant	\$57,635.69	NB
Bell Aliant	\$83,218.07	NB
Bellboy Drycleaners	\$73.45	NB
Best Value Inn and Suite	\$468.93	NB
Bestway Transport	\$9,496.99	NB
BLACK INK DESIGN	\$734.50	NB
Blaney Logging Ltd.	\$2,980.00	NB
Bowater Maritimes Inc.	\$7,234.64	NB
Bowater Maritimes Inc.	\$20,613.20	NB
Brad Thompson	\$13,448.83	NB
Bremner Farms Ltd.	\$200.63	NB
Bremner Farms Ltd.	\$10,751.10	NB
Brennan Farms Ltd.	\$22.59	NB
Brennan Farms Ltd.	\$7,378.00	NB
Bristol Group	\$100,000.00	NB
Brunswick Ind. Supplies	\$635.88	NB
Brunswick Ind. Supplies	\$1,657.38	NB
CSM Industrial Mechanic	\$3,475.86	NB
Curgess Transportation S	\$140,945.72	NB
Burke's Towing	\$158.20	NB
Burke's Towing	\$474.60	NB
Cyril MacDonald Ltd.	\$2,641.94	NB
D. L. Davidson Ltd.	\$13.39	NB
C.&E. Refractories	\$1,947.44	NB
Canadian Tire (F'ton)	\$3,628.07	NB
Canadian Tire(Miramichi)	\$211.63	NB
Carleton Victoria Forest	\$5,647.70	NB
Carleton Victoria Forest	\$52,906.95	NB

Carquest Auto Parts	\$140.11	NB
Carquest Auto Parts	\$316.23	NB
Carquest Auto Parts	\$3,295.91	NB
Casey Tire Ltd.	\$4,556.16	NB
Castle Machine Works Ltd	\$2,791.26	NB
Cedres Balmoral Ltee	\$4,881.60	NB
Central Mechanical Ltd.	\$2,034.00	NB
Charles Griffin	\$596.11	NB
Chateau Moncton	\$128.82	NB
Chateau Moncton	\$128.82	NB
Chatham Tire (1989) Ltd.	\$2,017.06	NB
Chatham Tire (1989) Ltd.	\$6,291.84	NB
Chris Derrah	\$1,106.90	NB
Chuckwag'n	\$42.17	NB
Chuckwag'n	\$454.05	NB
City of Fredericton	\$148.80	NB
City of Miramichi	\$3,430.12	NB
Clearsight Auto Glass	\$779.70	NB
Clearsight Auto Glass	\$1,841.90	NB
Coac Holdings Ltd.	\$1,076.00	NB
Coast Tire (Pokiok)	\$43,392.00	NB
Conrad Lavoie et Fils Lt	\$2,406.90	NB
Corcan	\$8,853.04	NB
Cormier Madawaska Constr	\$98,429.96	NB
County Line Trucking	\$3,051.00	NB
Covey Office Group Inc.	\$250.73	NB
Covey Office Group Inc.	\$16,732.60	NB
Cox Electronics	\$400.92	NB
Cummings' Building	\$1,865.95	NB
Cummins Eastern Canada	\$147.88	NB
Daigle Atlantic	\$910.01	NB
David G. Delano	\$388.32	NB
Day & Ross Inc.	\$198.67	NB
Day & Ross Inc.	\$11,077.90	NB
Day & Ross Inc. (US)	\$838.94	NB
Delco Enterprises Ltd.	\$7,554.39	NB
Delco Forest Products	\$1,191.00	NB
Delta Fredericton Hotel	\$153.68	NB
Department of Business N	\$2,390.91	NB
Department of Business N	\$195,644.84	NB
Dept of Finance (IFTA)	\$31,358.38	NB
Dept. Natural Resources	\$272,958.26	NB
DO NOT USE - Jean Louis	\$638.07	NB
Dolphin Steel	\$460.24	NB
Donovan's Mobile Wash	\$565.00	NB
Dontech Industries	\$2,152.37	NB
Dunbar Construction LTD.	\$49,868.96	NB
Dunbar Construction LTD.	\$80,648.60	NB
E & N Welding and Machin	\$1,667.88	NB
E. Cummings Contracting	\$2,423.82	NB
E. Cummings Contracting	\$22,255.48	NB
Eastern Fence Limited	\$9,156.96	NB
Eastern Fence Limited	\$302,946.61	NB
Eastern Tile and Carpet	\$1,576.34	NB
Econo Lodge	\$294.40	NB
Electric Motor Service	\$190.18	NB
Elsipogtog First Nation	\$1,888.33	NB
Everett's Healing Ltd.	\$912.00	NB
Executive Office Systems	\$1,084.80	NB
Executive Office Systems	\$3,186.60	NB
Fairview Fittings & Mfg	\$11,274.32	NB
Fastenal	\$3.00	NB
Fernrob Pressure Cleanin	\$740.90	NB
Fero Waste & Recyling	\$3,573.81	NB

Fero Waste & Recycling	\$6,911.59	NB
Forrock Construction Ltd	\$296.63	NB
FPM Peat Moss Co. Ltd.	\$38,329.60	NB
Frank Fales & Sons	\$14,841.85	NB
Frederick Dunster & Sons	\$36,442.50	NB
Frederickton Inn	\$6,031.48	NB
FREDERICTON INN	\$11,571.34	NB
Frederickton Region Solid	\$15.02	NB
Frederickton Region Solid	\$50.82	NB
Fundy Contractors Ltd.	\$14,447.57	NB
G & G Brothers Ltd.	\$3,630.17	NB
G.A. Levesque Reg'd	\$2,084.43	NB
G.N. LeBlanc Constructio	\$2,460.00	NB
Gallant Septic Service	\$327.70	NB
Gary C. Seely Ltd.	\$12,252.00	NB
Gary Griffin	\$828.57	NB
Gemtec Limited	\$5,570.90	NB
Gerrard Oval Strapping	\$7,458.00	NB
Gerry's Auto Body	\$3,933.32	NB
Giberson Transport Ltd.	\$2,053.56	NB
GILBERT Mountain Springs	\$88.90	NB
GILBERT Mountain Springs	\$105.00	NB
Gold Line Transport Ltd.	\$13,016.48	NB
Goodfellow's Trucking	\$16,791.12	NB
Goodfellow's Trucking	\$36,745.33	NB
Gorman's Taxi	\$20.34	NB
Grant Thornton	\$162,013.56	NB
Greco	\$43.44	NB
Greco (Chatham)	\$659.51	NB
Group Savoie	\$33,330.46	NB
J. Dale Griffin Inc.	\$1,410.06	NB
Harris and Roome Supply	\$389,467.09	NB
Hazen Thomas & Sons Cont	\$5,079.35	NB
Hermel Vaillancourt	\$512.63	NB
Hewitt Rentals Inc.	\$3,573.17	NB
Hillside Consulting Engi	\$18,072.66	NB
Howie R. Bird & Sons	\$13,926.80	NB
J. Loyt's Septic Service Lt	\$353.13	NB
J-Line Electric Ltd.	\$45.60	NB
Industrial Cold Milling	\$24,630.61	NB
Industrial Rubber Compan	\$12,906.53	NB
Iron Workers Local 842	\$10,191.50	NB
Irving Equipment	\$3,289.45	NB
Irving Oil Limited	\$13,863.63	NB
IVA Canada Local 306	\$3,161.35	NB
J.D. Irving Ltd. (deer)	\$1,276.53	NB
J.W. Bird and Co	\$23,633.53	NB
Jamer Material Ltd.	\$691.05	NB
Jason Crouse	\$2,286.32	NB
Jensen's Powertrain	\$82.75	NB
John Gyles Motor Inn	\$1,071.41	NB
J&T Transport Ltd	\$1,680.00	NB
K.G. Chase & Son Ltd.	\$503.68	NB
KDB Engineers	\$12,882.00	NB
Kenneth Hambrook	\$5,952.82	NB
Kingsco Transport	\$23,335.91	NB
Kingston's Fuels Ltd.	\$35.03	NB
K-Line Construction LTD.	\$3,966.35	NB
Kwik Kopy Printing	\$1,024.54	NB
L'Acadie Nouvelle	\$250.28	NB
Lakeview Inn & Suites	\$449.52	NB
Lakeview Inn & Suites	\$2,472.36	NB
Legresley Building Suppl	\$34,941.58	NB
Lenron Inc.	\$615.00	NB

Life 107.5 FM	\$214.70	NB
Life 107.5 FM	\$525.72	NB
Load Rite Logistics	\$13,670.00	NB
Local 842 Benefit Plan	\$7,302.60	NB
Lounsbury Furniture	\$45.14	NB
Lounsbury Furniture	\$1,290.38	NB
Lounsbury Lease Moncton	\$3,888.41	NB
M. E. Phillips & Sons Lt	\$13,262.97	NB
MacDonald Paving	\$3,915.92	NB
MacRae Envir. Services	\$6,271.50	NB
Madawaska Forest Product	\$1,698.39	NB
Mar-East	\$1,762.80	NB
Maritime Carpet One	\$37.28	NB
Maritime Cresting Compan	\$1,966.20	NB
Maritime Cresting Compan	\$10,833.31	NB
Maritime Fuels	\$3,936.08	NB
Maritime Hydraulic	\$7,797.00	NB
Maritime Hydroseed	\$51,968.11	NB
Match-it Supplies Ltd	\$26,221.57	NB
Match-it-Supplies-Ltd.	\$39,251.61	NB
Matt Harris & Son Ltd.	\$1,000.00	NB
Matt Tomah & Sons	\$181.31	NB
McCoy Enterprises Ltd.	\$10,831.06	NB
McGregor Construction	\$113.00	NB
Metal Working Associatio	\$480.25	NB
Michaud (Fuel)	\$4,277.49	NB
Michaud (Fuel)	\$14,110.54	NB
Michaud Petroleum Inc.	\$413.04	NB
Michaud Petroleum Inc.	\$820.38	NB
Midnight Contracting Inc	\$608.09	NB
Millennium Transport	\$10,203.62	NB
Miller Waste Systems	\$219.22	NB
Miramichi Airport Commis	\$3,492.80	NB
Miramichi Bolt & Screw	\$1,286.00	NB
Miramichi Bolt & Screw	\$4,574.55	NB
Miramichi City Surplus	\$51.30	NB
Miramichi Electronics	\$5,548.53	NB
Miramichi Feeds Inc.	\$65.15	NB
Miramichi Leader	\$654.89	NB
Miramichi Tire Ltd.	\$12,862.55	NB
Miramichi Tire Ltd.	\$16,982.65	NB
Mobile Equipment & Suppl	\$12,357.71	NB
Mobile Equipment & Suppl	\$103,469.92	NB
Motel L'Acadien	\$20,099.69	NB
Motion Fab Ltd.	\$13,741.76	NB
Moulin Aldo & Fils	\$47,094.06	NB
*J.B. Environmental Ind	\$340.00	NB
J.L. O'Neill	\$36,718.10	NB
Napa Douglastown (631)	\$11.02	NB
National Alarm Systems	\$45.20	NB
JB Construction Safety	\$113.00	NB
JB Forest Products Assoc	\$8,251.83	NB
NBADA	\$256.50	NB
*JBCC Foundation	\$10,000.00	NB
JBEPCC	\$154,735.33	NB
Newcastle Alternator & S	\$311.33	NB
Newcastle Alternator & S	\$2,333.76	NB
Newcastle Home Hardware	\$5,360.57	NB
Newcastle Home Hardware	\$14,883.08	NB
Newcastle Printing Limit	\$9,177.86	NB
*Newcastle Printing Limit	\$15,019.41	NB
Newcastle Ready Mix	\$90,259.88	NB
Nor Truss Ltd.	\$5,932.50	NB
Norcon Inc.	\$6,018.86	NB

North Shore Construction	\$741.57	NB
North Shore Construction	\$6,208.68	NB
North Shore Forest Produ	\$217,970.62	NB
North Shore Welding Supp	\$2,507.95	NB
Northeast Machine Works	\$3,368.58	NB
Northeast Machine Works	\$17,122.33	NB
Northside Pavement	\$67.80	NB
Northumberland Salmon Pr	\$400.00	NB
Nu Line Transport	\$1,050.00	NB
O'Brien Material Handlin	\$78.40	NB
O'Brien Material Handlin	\$3,004.75	NB
O'Leary Pontiac	\$4,769.95	NB
Olympic Metals Ltd.	(\$19,317.56)	NB
Olympic Metals Ltd.	\$316,911.64	NB
Oxygaz	\$1,468.59	NB
Palmar Inc	\$19,650.79	NB
Park Inn & Suites	\$600.92	NB
PCO Services Inc	\$73.45	NB
Perth-Andover Motor Inn	\$4,677.07	NB
Pole-Star-Transport	\$17,055.43	NB
Portage Restaurant	\$478.83	NB
Portage Restaurant	\$1,828.78	NB
Pressure Kleen Mobile Wa	\$904.00	NB
ProSet Steel Inc.	\$15,574.95	NB
Prospect Inn - Frederic	\$1,582.00	NB
Provincial Security Inc.	\$10,454.31	NB
PumpsPlus	\$2,500.00	NB
PumpsPlus	\$6,365.16	NB
Queen's Buffet Inc.	\$480.15	NB
R. & D Zinck Holdings	\$1,551.25	NB
R. Murphy & Sons Truckin	\$8,256.46	NB
R. Sargent Delivery	\$145.27	NB
R. W. Kelly Thermo Ltd.	\$900.05	NB
R. W. Kelly & Sons Ltd.	\$1,186.50	NB
Rae Mac Agencies	\$2,830.50	NB
Ready John Inc.	\$239.56	NB
Red Bank First Nation	\$8,445.65	NB
Red-D-Arc Welderentals	\$6,321.22	NB
Rene Transport	\$4,921.15	NB
Reproduction Atlantique	\$6,778.77	NB
Research and Productivit	\$8,945.08	NB
RH Frenette	\$72,224.44	NB
Richard Downing	\$1,223.32	NB
River Rock Construction	\$348.27	NB
River Security	\$419.68	NB
River Signs	\$1,020.39	NB
Road Builders Assoc.	\$101.70	NB
Robert Hackett	\$1,073.50	NB
Rob's Towing	\$302.84	NB
Rockwood Transportation	\$2,645.47	NB
Rodd Park House Inn	\$480.83	NB
Ronco Transportation Ltd	\$155.66	NB
Rotalec Atlantic	\$1,861.86	NB
TPM PROWRAP	\$2,852.18	NB
Russell Metals (NB)	\$114,123.33	NB
S. & S. Logging Ltd	\$16,378.32	NB
Savoie Export Ltd	\$4,701.90	NB
ENB Forest Products Mrk	\$1,718.85	NB
ENB Forest Products Mrk	\$42,814.94	NB
ServiceMaster Northeast	\$421.52	NB
ShadComm Ltd.	\$1,065.75	NB
Shawn Dee	\$200.00	NB
Shoreline	\$26,861.17	NB
Shred-It Atlantic Canada	\$67.80	NB

Shred-It Moncton	\$434.93	NB
Shred-It Moncton	\$646.36	NB
Sign Warehouse Inc.	\$95.82	NB
Skarborn Engineering Ltd	\$440.11	NB
Skarborn Engineering Ltd	\$769.52	NB
Smith & Smith	\$3,748.02	NB
SNB Forest Products Mkt	\$90,405.30	NB
South West Forest Manage	\$6,480.24	NB
Southampton Logging	\$967.97	NB
Springhill Construction	\$30,537.95	Nb
Springhill Construction	\$41,969.90	Nb
St. Onge Industrial	\$988.50	NB
Stripeworks	\$1,862.06	NB
Stripeworks	\$6,626.60	NB
Strongco	\$1,360.07	NB
Strongco	\$11,400.00	NB
Sunbury Transport Ltd.	\$8,618.66	NB
Sunny Corner Enterprises	\$109,860.79	NB
T. J. Loading Ltd.	\$22,272.60	NB
T. J. Loading Ltd.	\$78,436.20	NB
T. Harris & Sons Trucking	\$2,873.02	NB
Tarp Rite Inc.	\$35,048.21	NB
T.C Trailer & Welding	\$514.20	NB
T.CI Manufacturing	\$5,356.20	NB
Technical Inspection Ser	\$50.00	NB
Technico.	\$17,074.45	NB
Technico.	\$169,913.44	NB
Tempo Transport Inc.	\$1,130.00	NB
Tempo Transport Inc.	\$2,500.00	NB
The Compello Institute o	\$250.00	NB
The Panel Shop Inc	\$41,977.24	NB
Therault Truck Centre	\$3,348.19	NB
Thermoshell /Bluewave	\$1,094.32	NB
Tin Enterprise Crane	\$760.21	NB
Top Gun Express	\$20.00	NB
Towne Sales and Service	\$2,095.58	NB
Travel Health Clinic	\$187.80	NB
Triple M Trucking Ltd.	\$453.60	NB
Tri-Town (Robert Landry)	\$8.53	NB
Tri-Volt Electric Ltd	\$4,954.03	NB
True Tronic Computers	\$335.61	NB
True Tronic Computers	\$3,610.35	NB
Universite de Moncton	\$5,000.00	NB
Universal Fabric Services Ltd	\$115.88	NB
Universal Fabric Services Ltd	\$1,363.60	NB
Valley Equipment Ltd	\$10,438.32	NB
Victor Bernard & Sons	\$1,514.20	NB
Walker's Investigation	\$3,417.12	NB
Walkers Investigation Bu	\$15,444.84	NB
Walsh Truck & Trailer Re	\$386.45	NB
Warren Transport Ltd.	\$1,348.47	NB
Warren Transport Ltd.	\$15,676.83	NB
Water Blasting	\$7,978.25	NB
Water Blasting	\$55,216.67	NB
William J. Kerr Ltd.	\$10,341.50	NB
Williston Septic	\$173.74	NB
Wilson Concrete Pipe Ltd	\$39,174.27	NB
SC Marketing Board	\$165.11	NB
SC Marketing Board	\$4,121.81	NB

\$6,532,380.86



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June 12, 2009

Dear Mr. Tozer

Re: Internal control findings from the 2009 audits of Atcon Construction Inc.,
Envirem Technologies Inc., and Atcon Industrial Services Inc.

Receiving observations and findings on your financial reporting processes and controls is one of the benefits of an annual financial statement audit. Our approach includes an increased emphasis on internal control and our procedures identified a number of items that we need to report and you need to consider.

Introduction

Our approach is designed around an evaluation of your internal controls over financial report (internal control) against an internationally accepted framework. This framework divides internal control into five interrelated components:

- the control environment (this component includes those activities and controls that set the tone of an organization and influences the control consciousness of its people)
- risk assessment (the entity's identification and analysis of relevant risks to achievement of its objectives)
- control activities (the policies and procedures that help ensure that management directives are carried out)
- information and communication (support the identification, capture, and exchange of information in a form and time frame that enable people to carry out their responsibilities)
- monitoring (a process that assesses the quality of internal control performance over time)

Our approach to internal control involves gaining an understanding of the entity's controls pertinent to reliable financial reporting and evaluating our findings against the internal control framework. More specifically, our process involves:

- understanding the processes that impact financial reporting

Exhibit #49

December 7, 2010

RB
Blackwell Court Reporting

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RB

- documenting an understanding of the controls within such processes that prevent or detect errors, including fraud
- Identifying potential control “gaps,” operating deficiencies, and other weaknesses or advisory comments.

The standards of the public accounting profession require us to report annually to you our findings on weaknesses and deficiencies in your internal controls. We categorized such findings as:

- *Material weaknesses* (individual or aggregated deficiencies that could result in a material misstatement in the financial statements due to fraud or error)
- *Significant deficiencies*
- *Other deficiencies and advisory comments*

Material weakness

Our audit procedures identified the following material weakness in internal control:

Activity level

1. Payables system/revenue recognition

Management is currently reviewing the purchasing cycle and assessing improvements. Specifically the purchase order and receiving reporting, policies are not being followed consistently. Because of this, costs and consequently the profit on these costs could be missed therefore having a direct impact on the financial reporting process (risk that profit is over or understated). There have been instances where expenses have only been identified several months after being incurred due to a breakdown in the process of utilizing purchase orders and receiving reports.

As a compensating control, operational management now performs a regular review of committed costs and cost to complete analysis to ensure that all significant costs are captured in the system for each reporting period. As an additional compensating control, accounting performs supplier reconciliations on all major vendors on a monthly basis.

The Company needs to enforce the adherence to these policies when initially inputting costs into the system. This ensures that costs associated to each project is captured and at the appropriate level of detail. There should also be consequences in place if these policies are not adhered to.

Recommendations:

We recommend that all purchase orders and invoices be entered into the payables system when received. If there is an issue with the approval of the purchase order or invoice that requires the payment to be held the Company should utilize the accounting software or a manual process. This will ensure that accurate costing information is in the accounting system to facilitate management's estimates related to “cost to complete” and revenue recognition for individual projects.

Management response:

The senior management team has been working on a solution to this issue for the past year however in the interim strong compensating controls are being used. A project management system is currently being improved and one expected improvement of this system is providing more accurate and timely cost information.

Significant deficiencies

Our audit procedures identified the following significant deficiencies in internal control:

Activity level**1. Revenue/work in progress**

Once a contract has been awarded to the Company the project management team assigned to the project is assigned the task of developing a detail costing plan for the project. The project plan is then reviewed and approved by management.

The project plan is then forward to the accounting department so the information can be used to set-up the project in the accounting system in sufficient detail to monitor the project throughout the construction period.

The project team is responsible to issuing purchase orders and approving the invoices for payment. Once the documents are approved by the project team they are forwarded to the accounting department at corporate for entry into the accounting system. Regular monthly meetings are now occurring between the accountants, controllers and project managers to discuss the status of jobs in progress before finalizing the work in progress and as a result the amount being reported on the financial statements. Controllers are beginning to have project managers formally sign-off of the job status as part of the month-end process.

The above practice was established by management during the currently fiscal year and as a result it was not used on all projects. Management are also only using this process on the larger projects. As a result of not using this process on all projects, management might not have the necessary information required for the revenue recognition process.

Recommendation:

We recommend that the Company adopt the above process for all projects so that the Company has the most accurate and timely information possible when establishing and assess the major assumption in the revenue recognition process.

Management response:

It is management's intention to implement this process to all significant contracts. The implementation of the improved process began with the larger contracts during the 2009 Fiscal year.

- Credit limits for significant customers should be reviewed on a regular basis to determine if their current credit is appropriate. The financial condition of

customers and the ability to pay can change rapidly, especially in the current economic environment.

Recommendation:

We recommend that ongoing credit evaluations be completed and limits are reviewed on a regular basis for appropriateness.

Management response:

Credit limits are reviewed on an annual basis as required by our EDC insurance contracts. As payment habits change we will update credit reports as required. All credit limits are approved by CFO.

2. Inventory cycle

- With regards to Atcon Industrial Services Inc. and Atcon Construction Inc. and Envirem Technologies Inc. there are too many activities/processes performed by the accounts payable/purchasing staff. This lack of segregation of duties leaves the companies vulnerable to fraud or errors.

Recommendation:

The following guidelines are suggested to alleviate this segregation of duties problem:

- The employee in charge of purchasing should not have the responsibility of receiving and recorded the goods into inventory.

Management response:

Compensating controls are in place – project managers and accounting staff review the details costs of all projects on a monthly basis. Management will investigate the costs benefit of the segregation of these duties.

- Currently vendor master files are not reviewed to determine if new vendors added, are in fact valid. This could lead to fictitious vendors in the system being paid for work that was never completed.

Recommendation:

We recommend that the vendor master files be reviewed on a regular basis to determine if vendors set up are appropriate. This reduces the risk that fictitious vendors are set up in the system.

Management response:

The CFO has recommended this review to the Purchasing Manager and this is being completed in the current year.

- Currently there is rock inventory (Atlantic) in Atcon Construction Inc. that is not being tracked for amounts produced and sold. This could lead to inventory figures that are inaccurate for financial reporting purposes. The Company currently monitors inventory levels by periodic management estimates of the volumes.

Recommendation:

We recommend that the Company establish a system to track and record the movements in inventory from month to month. The Company should also consider having the internal surveying group measure the inventory levels verifying the tracking system's accuracy on a periodic basis. This will ensure that all activity relates to production and sales are being captured in the accounting records on a timely basis.

Management response:

Monthly tracking is not practical as these quarries are only accessible for a few months a year. Periodically surveyors do survey the quarries.

- Atcon Construction Inc. has adopted the accounting policy of capitalizing spare parts and consumable supplies which are then amortized over a 12 month period. Based on fiscal 2009 the activity in spare parts and consumable supplies was approximately \$6 million. It is our understanding that these supplies are currently not tracked in an inventory management process.

Recommendation:

We recommend that the Company should review the items being captured with this accounting policy. The Company should review the activity captured in these policy to determine if some more accurate tracking could be maintained. For example, general supplies which are for a specific project could be removed from the grouping and charged to work-in-progress when the bulk supplies are set to the site on set-up and when a project is complete the remaining supplies could be returned to the general grouping. By tracking a few major projects or inventory items the entity could capture more information to help manage this significant expense.

Management response:

As part of the improvements in cost tracking we are moving toward have more of these costs directly allocated to jobs instead of general consumables. We will ensure detail counts are done on a periodic basis going forward to ensure information is accurately maintained.

Governance**1. Financial reporting**

- Currently, senior financial reporting personnel have the ability to make journal entries in the financial reporting system. This gives the opportunity for senior personnel to make entries in the system without having them reviewed or approved and therefore give the rise to the risk of errors in financial reporting. There are currently two ways this can be accomplished; 1 – through the user admin password unlimited capabilities and 2 – through knowledge of each accountants password on sign in to star builder, the companies financial accounting software.

Recommendation:

We recommend that the Company restrict the number of users who have administrator rights in the financial reporting software. In addition, employees with 'super user' rights should not be involved with the monthly financial reporting.

We also recommend that employee passwords are encrypted and unique. It should also be stressed that passwords are kept confidential at all times.

Management response:

This is a system issue with the accounting software Atcon uses. In order to have a common database for our suppliers and customers for all our GL's we need the ability to copy vendor and customer information across to all Company – it is important to segregation of duties this ability is maintained by individuals who can not process payments or customer invoices. We have contact the software developer to make modifications however this is not complete. Compensating controls in place as final review is by the CEO who has no access to the accounting software and the Company specific accountants have access to view all journal entries. In practice the CFO does not utilize this ability.

- Currently journal entry posting by accountants are not signed off as reviewed. Although monthly financial packages are review by controller/VP finance and CEO, it does not get to the level of detail of journal entry review and approval.

Recommendation:

We recommend that journal entries be reviewed on a regular basis and signed off for approval. This may be a policy that can be added to the monthly/weekly review (i.e. review general journal entries posted monthly and determine if unusual entries were made and if there is appropriate support for the journal entry. Sign off that they were reviewed, accepted and approved.)

Management response:

We will investigate the benefits of this process.

2. Monitoring

- The corporation does not currently have a formal process for monitoring internal controls. This is becoming an expected activity under good governance in organizations whereby shareholders want the reassurance that appropriate internal controls (foundational and operational) are established and in fact operating as designed. An internal audit function addresses these issues.

Recommendation:

Where organizations are not in a position to justify a formal internal audit function, someone in the accounting group should be identified who would assume some responsibility for monitoring adherence to established internal controls. Periodic reporting to the owners should also be addressed. Some examples (not all inclusive) of controls to monitor would include adherence to:

- Journal entry testing for appropriate sign off (work in progress adjustments)
- Review of contracts/change orders for appropriate approval
- Appropriate division of duties
- Expenditure and payroll approval processes
- Processes to ensure all revenues are billed properly and on a timely basis
- Purchase order/receiving report policies are being abided by
- Appropriate approval level obtained for expenses
- Documented review of monthly financial packages and supporting documentation
- Appropriate budgeting process for each new contract/changes order if required

This person in charge should re-perform these controls to ensure that they are in place and operating effectively.

Management response:

Improvements to our project management system and integration with our accounting system is our priority at this time. Once systems are improved the evolution of an internal controls function would be beneficial.

- The Company has no process to identify and evaluate internal and external business risks. Without the identification of internal and external business risks, the Company may not be able to prevent an event/contingency or react on a timely basis. In addition, there may be financial reporting implications that need to be considered.

An example of internal business risk to your Company could be appropriate cross training of accounting personnel.

An example of external business risk could be the increased competition in your industry or an economic downturn in the economy.

Recommendation:

We therefore recommend that management establish a formal process to identify and evaluate internal and external business risks and a ranking of them would be appropriate. Further, we recommend that management should update the shareholder on the results of the risk assessment process.

Management response:

Due to the structure of the organization the risks are managed by a small senior management team. Senior management team is meeting twice a month to review key risk areas and developing action plans. Quarterly construction meetings have started last year and have continued this year and are improving the communication and the input received from the senior group. Subsequent to year end an Advisory Board is being formed as well that will bring increased structure and focus on these areas.

- The Company currently doesn't track minutes of Board of Director/Management meetings held throughout the year.

Recommendation:

We recommended that at all Board of Director/Management meetings; minutes are kept to ensure that all important conclusions reached are documented and kept for future reference.

Management response:

The development of the Advisory board will increase the structure required on these meetings. They will act in the capacity of a Board.

3. Information technology

- Currently the Company's main servers are located in an electrical room on a basement floor. The Company's servers are vulnerable to environment threats such as fire and flooding. Overall, these problems may lead to a loss of data and may cause a significant reduction in the efficiency of operations, or they may lead to an interruption in operations.

Recommendation:

We recommend that you move your server into a physically secure, climate controlled room which is specifically protect from environmental threats.

Management response:

Backups are tested periodically and weekly back ups are stored off site. Potential for information lost is minimal. The cost benefit analysis for a parallel server does not support the capital investment at this time.

- User profiles can currently be altered by senior financial personnel. This could lead to concerns surrounding the financial reporting process. Inappropriate access could be given to employees and as a result could have an impact on the processes that have been put in place by the Company.

Recommendation:

We recommend that all user profiles and menus changes on the system be limited to the IT department. These changes should only be made under the request of management.

Management response:

Only accounting system access is managed by the accounting department – Lisa Godin is the only senior accounting staff that has this access – she is not responsible for the final approval of the statements or the approval of job roles – this responsibility is the CFO's. The CFO does not have this ability.

Deficiencies and other advisory comments:

Other observations include:

1. The Company does not have a code of conduct. A code of conduct, either formal or informal, provides clarity to employees by establishing expectations for ethical behavior and consequences for non-compliance with the established guidelines.

2. An anonymous 'whistleblower' process should be established whereby employees are able to report wrongdoings without fear of reprisal.
3. System event logs should also be reviewed by appropriate personnel to ensure that there are no unauthorized attempts to gain access to information that is confidential or change information that would have an effect on the financial reporting of the Company.

Conclusion

Atcon Holdings Inc. management must judge the cost of implementing controls that would appropriately remediate the findings with the benefit that the controls will achieve. The purpose of this letter is to provide you with information on the identified risks so that you can make appropriate judgments.

Often there are practical ways for businesses such as Atcon Holdings Inc. to improve their financial reporting process. As your auditor and professional advisor it would be a pleasure to discuss our findings with you and provide you with appropriate guidance on ways to improve your controls.

The matters discussed herein are those that have been noted as of May 7, 2009 and we have not updated our procedures regarding these matters to the current date. In addition, this communication is prepared solely for the information of management and is not intended for any other purposes; we accept no responsibility to a third party who uses this communication

Thank you for the opportunity to contribute to the success of Atcon Holdings Inc. We look forward to working with you in the future as your auditor and advisor.


Yours very truly,

Grant Thornton LLP



K.M. Ostridge, CA
Partner

cc Katrina Donovan, CA, CBV
VP Finance and Administration

Date:	June 16, 2009			Inter-Office Memo Note Interservices	
	Name and Title / Nom et titre	Department / Ministère	Tel./Tél.	Reference/Réf.	
To:/ À:	Phil LePage	BNB			
From:/ De:	Hon. Jack Keir Acting Minister				
Copies	Sadie Peron, John Watt				
Subject:/ Objet:	Atcon Holdings Guarantees				


The loan guarantees contemplated in my April 24th, 2009 offers to Atcon Holdings Inc. require the payment of guarantee charges totaling \$750,000, due at closing.


In order to enable the company to engage a Management Consulting firm to undertake a comprehensive review of the company's operations, I am prepared to reduce the first year's service charges by the amount of the cost of the consultant's review and to waive the requirement to pay such amount.

Terms and scope of the consulting review will be mutually determined by Atcon, BNB, and the Bank of Nova Scotia.

The full amount of the fees is to be held in trust by the company's lawyer with instructions to release the funds only to Atcon and the Consulting Firm jointly, or to the Minister of Finance. Instructions to the company's lawyer to release any or all of the funds held in trust will be issued by the Deputy Minister of Business New Brunswick.


 Jack Keir
 Acting Minister

Exhibit #50
 December 7, 2010

 Blackwell Court Reporting

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Schedule "C"

Atcon Construction

Summary of conference call with NWT government representatives

June 23, 2009

1. The Bridge is in its second season of construction, with 4 of the eight bridge piers built.
2. Plan for this summer is to complete the remaining four piers in anticipation of adding the superstructure next year.
3. The superstructure design changes are expected to be completed and approved by late fall.
4. Atcon will be required to provide a new price for the revised superstructure work. If the revised price is unacceptable to the Bridge Corporation (and the NWT Govt.), Atcon could conceivably lose the contract. However, that would result in a monetary settlement to Atcon and the release of the Minister's \$13 million guarantee.
5. The delay in the approval of the design is expected to result in a one year delay in the completion of the bridge.
6. Atcon has four outstanding notices of default from the Deh Cho Bridge Corporation. These concern the failure to provide a concrete plant with the capacity specified in the contract, failure to provide adequate engineering oversight, non-payment of sub-contractors, and the work stoppage.
7. Atcon has had serious conflicts with a major sub-contractor which has resulted in work on the bridge being stopped. NWT sees this conflict as resulting from Atcon failure to pay \$1 million of a \$2.5 million progress payment to the sub-contractor, and refusing to agree to a \$2 million payment directly from the Deh Cho Bridge Corporation to the Sub-contractor.
8. In order to get the work started, The Bridge Corporation has entered into a temporary agreement with the sub-contractor to do the work directly for the Corporation rather than as a sub-contractor. This arrangement will affect only the general management of this summer's construction season and the construction of the remaining four bridge piers. Atcon will still provide the steel components and the work camps.

Exhibit #52

December 7, 2010

Blackwell Court Reporting

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MB

9. The financial impact on Atcon will be a decrease in revenues of \$15-20 million, offset by a corresponding decrease in sub-contractor costs. The net financial impact is not significant.

At this point in time, it would appear that the only real impact on Atcon will be the loss of the mark-up of the sub-contract work on the bridge piers this summer.

There could be much more serious issues later this fall and next year if Atcon's revised price for the superstructure is unacceptable or if Atcon is unable to make peace with its sub-contractors.

There was no question that the NWT government representatives are highly dissatisfied with Atcon's performance as general contractor, and it was implied that the Deh Cho Bridge Corporation shares that opinion of Atcon's performance.

June 30, 2009

The Bank of Nova Scotia
1709 Hollis Street, 4th floor
Halifax, NS
B3J 2M1

Attention: Patricia Davis, Senior Manager

Dear Ms. Davis:


RE: Atcon Holdings Inc. (the "Corporation")


I refer to my three letters of offer to the Corporation dated 24 April 2009, as amended by an amending letter dated June 9, 2009 (the "**Letters of Offer**") and to the respective loan guarantees (the "**Loan Guarantees**") issued to The Bank Of Nova Scotia (the "**Bank**") pursuant thereto and confirm the following:

1. that all requirements and preconditions to the unconditional delivery of the respective Loan Guarantees to the Bank have been satisfied;
2. that the security taken by the Bank in relation to the respective Loan Guarantees is satisfactory and meets the requirements of the Letters of Offer and the Loan Guarantees including, without limitation, the requirement to take security over Atcon Group Inc.'s assets in Sweden which, it is acknowledged, has been satisfied by the taking of a pledge of the shares in OPI AB owned by Atcon Group Inc.;
3. that the Bank's ability to enforce the Loan Guarantees will not be prejudiced by any unenforceability or loss of any security in respect of the Loan Guarantees held from time to time by the Bank from the Corporation or any other person, whether the loss is due to the means or timing of any registration, disposition or realization of any collateral that is the subject of that security or otherwise.

Yours truly,

Victor Boudreau

Exhibit #56
December 7, 2010

Blackwell Court Reporting

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CERTIFICATE Re PENDING LITIGATION

To: Minister of Business New Brunswick (the "Minister")

And To: Bank of Nova Scotia (the "Bank")

From: Atcon Holdings Inc. (the "Borrower")

And From: Atcon Group Inc. (the "Parent")

Re: Loan Guarantee (the "Guarantee") dated June●, 2009

FOR GOOD AND VALUABLE CONSIDERATION (the receipt and sufficiency of which is hereby acknowledged by each of the undersigned), the undersigned each hereby represents and warrants to the Minister and to the Bank that: (a) there are no actions, suits or proceedings pending or, to its knowledge (or to the knowledge of any other corporation with which it may be affiliated), threatened, against or affecting it (or affecting any other corporation with which it may be affiliated) or any of its undertaking, property and assets (or the undertaking, property or assets of any other corporation with which it may be affiliated), at law, in equity or before any arbitrator or before or by any governmental department, body, commission, bureau, agency or instrumentality, in respect of which there is a reasonable possibility of a determination adverse to it (or any other corporation with which it may be affiliated) and in respect of which, if determined adversely, would materially and adversely affect its business, operations or financial condition (or that of any other corporation with which it may be affiliated) or its ability to perform its obligations to the Minister or to the Bank; and (b) neither the Borrower nor the Parent (nor any other corporation with which it may be affiliated) is in default with respect to any law, regulation, order, writ, judgment, injunction or award of any government, commission, board, agency, court, arbitrator or instrumentality, default under which would have such a material and adverse effect; provided, however, that the Borrower is aware of the following actions, suits or proceedings, each of which (except where otherwise noted below) is being disputed or contested and an appropriate defence, if necessary, filed in response thereto:

Atcon Construction Inc.

- Kildair Service Ltd. - \$338,147.67 – supply of materials – Notice of Registration of Memorial of Judgment filed May 22, 2009 (being paid from Trust during closing of refinancing)
- Atco Structures Inc. - \$17,334.30 – supply of service – Notice of Civil Claim filed May 29, 2009 (Canadian Natural Resources Ltd. "CNRL")
- PTI Premium Camps Services Inc. - \$650,716.50 – supply of service – Statement of Claim filed June 3, 2009 (CNRL)
- Noralta Lodge Ltd. - \$281,454.30 – supply of service – Statement of Claim filed April 30, 2009 (CNRL)

- Genivar Consultants Limited Partnership - \$335,464.40 – Statement of Lien filed May 6, 2009
- United Rentals - \$124,155.30 – supply of service – Statement of Lien filed May 20, 2009 (CNRL)
- United Rentals - \$222,944.46 – supply of service – Statement of Lien filed May 20, 2009 (CNRL)
- United Rentals - \$47,973.32 – supply of service – Statement of Lien filed May 20, 2009 (CNRL)
- United Rentals - \$28,275.43 – supply of service – Statement of Lien filed May 20, 2009 (CNRL)
- Stantec Consulting Ltd - \$131,547.82 – supply of service – Statement of Lien filed April 30, 2009 (CNRL)
- Can –Traffic Services Ltd. - \$2,811,739 – supply of material/service – Statement of Lien - expired
- Neutrino Trucking Ltd. - \$2,638,669 – supply of trucking services – Statement of Lien – expired
- Bruce Rendell – wrongful dismissal – Statement of Claim filed April 17, 2009
- Kevin Pytck – wrongful dismissal – Statement of Claim filed December 23, 2008
- Jose Rodriguez – wrongful dismissal – Statement of Claim filed May 8, 2007

Envirem Technologies Inc.

- Frederick Dunster & Sons Ltd. - \$36,442.50 – transport of compost – Notice of Action with Statement of Claim filed June 6, 2009 (this claim is included in listing of NB suppliers to be paid by end of June 2009)
- Canadian National Railways - \$165,169.25 USD – disputed amounts - Notice of Action with Statement of Claim attached, Notice of Intent to Defend, Statement of Defense filed January 19, 2009 on the basis that no amount is payable and the amounts claimed were claimed against an insolvent debtor in Maine, Morse Bros.. The action has been stayed because of the arbitration.

Atcon Industrial Services Inc.

- Russel Metals Inc. - \$114,123.33 – supply of metals – Notice of Action with Statement of Claim filed March 26, 2009 (this claim is included in listing of NB suppliers to be paid by end of June 2009)
- Russel Metals Inc. - \$771,753.76 – supply of metals to Eastern Canadian Structures then to Scotia Sheet Metals (materials eventually supplied to expansion at fabrication facility) – Notice of Action with Statement of Claim filed March 10, 2009
- Rideout Tool and Machine Inc. - \$16,536.58 – supply of goods and services – Notice of Action with Statement of Claim filed May 6, 2009

- Eastern Fence Limited - \$47,220.85 – supply of materials re expansion of Fabrication facility – notice of Action with Statement of Claim dated February 11, 2009 (this claim is included in listing of NB suppliers to be paid by end of June 2009)

Atcon Plywood Inc.

- Groupe Savoie Inc - \$45,815.19 – supply of wood – Notice of Action with Statement of Claim filed January 28, 2009 (this claim is included on list to be paid with NB suppliers by end of June 2009)

DATED at _____, Province of New Brunswick, this ____ day of June, 2009.

ATCON HOLDINGS INC.

Per: _____ c/s
President – Robert W. Tozer

ATCON GROUP INC.

Per: _____ c/s
President – Robert W. Tozer

4300 17129-1

Working Capital Guarantee

THIS GUARANTEE AGREEMENT made as of this 30th day of June, 2009.

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK, as represented by the Minister of Business New Brunswick, (hereinafter called the "Minister")

OF THE FIRST PART

A N D:

THE BANK OF NOVA SCOTIA, a chartered Canadian bank under the laws of Canada, (hereinafter called the "Bank")

OF THE SECOND PART

A N D:

ATCON HOLDINGS INC., body corporate, duly incorporated under and by virtue of the laws of New Brunswick, (hereinafter called the "Corporation")

OF THE THIRD PART

WHEREAS the Bank has extended or has agreed to extend to the Corporation a term loan in an amount of up to \$20,000,000.00 (the "Loan") to assist the Corporation with working capital;

AND WHEREAS the principal amount under or in respect of the aforesaid Loan is hereinafter called the "Principal Sum";

AND WHEREAS at the request of the Corporation, the Minister has agreed to guarantee to the Bank the repayment of all or a portion of the Principal Sum in accordance with the terms and conditions herein set forth.

Exhibit #59

December 7, 2010

RB
Blackwell Court Reporting

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RB

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the Minister giving the guarantee herein contained, and in consideration of the sum of Ten Dollars (\$10.00) paid by each of the parties hereto to the other of them, the receipt whereof by each of them is hereby acknowledged, and in consideration of the Bank agreeing to deal with or to continue to deal with the Corporation in the way of its business as a bank, and in further consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Minister hereby guarantees to the Bank the repayment of that portion of the Principal Sum from time to time which is limited to the lesser of:

- (a) \$20,000,000.00;
- (b) \$20,000,000.00 less the amount that the Guarantee is reduced as more particularly set forth hereinbelow;
- (c) the amount of the Principal Sum outstanding on the Loan at the time that the Bank makes a demand for payment;
or
- (d) the amount of the Principal Sum remaining unpaid after the Bank has realized on its Security.

This Guarantee shall reduce by \$5,000,000.00 on 30 June 2012 and shall terminate on that date in 2013 which is four years following the date hereof and in any event not later than June 30, 2013, unless on or before such date a request for payment on the Guarantee is made by the Bank upon the Minister, and shall be subject always to the terms and conditions herein set forth. For greater certainty, interest on the Loan is not guaranteed.

2. As security for the repayment or payment, when due, of the Principal Sum, it is understood that the Bank will hold:

- (a) a first charge on the Corporation's inventories and accounts receivable;
- (b) an assignment of accounts receivable insurance proceeds;
- (c) a charge on all other assets both real and personal and wheresoever situate;
- (d) an unlimited guarantee from Atcon Group Inc; and
- (e) a guarantee from Robert Tozer which guarantee shall not attach to the guarantor's principal residence

all in form satisfactory to the Minister, which security held or to be held by the Bank under this Clause, together with all other guarantees and other security of whatsoever nature or kind from time to time held by the Bank, in whole or in part, as security for the Principal Sum, is hereinafter collectively called the "Security".

3. It is agreed and understood that in the event Bank demands full payment of the Loan from the Corporation, and provided that no repayment of the Loan has been made by the Corporation within 10 days of the demand or within such longer period of time as the Bank, in its discretion, may determine to be reasonable, Bank shall, forthwith thereafter, notify the Minister of such demand and commence using all commercially reasonable efforts to realize and/or collect on the Security, and shall apply all proceeds arising from such realization and/or collection of the Security in the following manner and order:

- (a) firstly, against the costs and expenses necessarily and reasonably incurred by Bank to realize on the Security, and
- (b) secondly, against indebtedness of the Corporation to the Bank other than the Loan; and
- (c) thirdly, against the guaranteed Loan.

Notwithstanding the foregoing, at any time after the commencement of realization efforts by the Bank, the Bank may demand payment from the Minister and the Minister shall within 15 working days make such payment. The Bank shall complete its realization on Security and assign any remaining Security to the Minister. In the event that the Bank's realization efforts result in full repayment of the Corporation's indebtedness other than the Loan and there are additional amounts that would, in the ordinary course, be applied against the guaranteed Loan, then in such event the Bank shall be required to account for these amounts and reimburse the Minister for the payment referred to hereinabove to the extent of the amounts so realized.

4. Any payment made or to be made by the Minister hereunder shall be applied against the balance of the Principal Sum existing at the time of demand that remains outstanding and unpaid at the date of such payment.

5. The Bank shall furnish to the Minister a report indicating the amount of the Loan annually during the term of the Guarantee; provided always that the failure of the Bank to comply with this Clause shall not be grounds for invalidating the Guarantee unless written notice of such failure shall have been given by the Minister to the Bank and the Bank within ten (10) days of the giving of such notice has not remedied such default.

6. Subject to Clause 5 hereof, the Guarantee and the obligations and liability of the Minister under the Guarantee shall be conditional upon the Bank complying fully with each of its obligations under this Agreement. The failure of the Corporation to comply with its obligations under this Agreement shall not invalidate the Guarantee.

7. The Bank shall not at any time while the Loan, or any part thereof,

remains outstanding and unpaid release or discharge the Security, or any part thereof, that the Bank holds without the prior written consent of the Minister or of an agent or representative of the Minister.

8. The Corporation agrees to immediately reimburse to the Minister all amounts paid or payable by the Minister to the Bank under or in respect of the Guarantee, together with interest on such amounts from and after the date the Minister makes payment thereof to the Bank at the rate of four and six tenths percent ($4\frac{6}{10}\%$) per annum, calculated half-yearly, not in advance, until paid, with interest on overdue interest at the said rate.

9. The Corporation does hereby covenant and agree with the Minister to observe, perform and satisfy each and every of those terms, conditions undertakings, agreements, restrictions, requirements, duties and obligations on the Corporation's part to be observed, performed or satisfied that are set forth, contained or referred to in those certain letters from the Minister addressed to the Corporation, dated the 24th day of April 2009 and the 9th day of June 2009 copies of which letters (hereinafter called the "Letters of Offer") are attached hereto as Schedule "A". The failure of the Corporation to comply with its obligations under this Agreement, including the Letters of Offer, shall not invalidate the Guarantee and the Minister's obligations to the Bank thereunder.

10. All notices, demands, reports and other documents required, mentioned, permitted or contemplated under this Agreement shall be sufficiently given, made or received if in writing and served personally, or if mailed postage prepaid by registered mail at any post office in Canada or sent by facsimile, at the address shown below or at such other address or addresses as the party or parties to whom such notice, demand, report or other document is directed shall have last notified the party or parties giving the writing or document, in accordance with the provisions of this Clause:

- (a) if directed to the Minister, to:

Minister of Business New Brunswick
P. O. Box 6000
Fredericton, N.B. E3B 5H1

- (b) if directed to the Bank, to:

The Bank of Nova Scotia
Attention: Patricia Davis, Senior Manager
1709 Hollis Street, 4th Floor
Halifax, NS B3J 2M1
Telephone: 902-420-6167 Fax: 902-425-8100

- (c) if directed to the Corporation, to:

Robert Tozer, President
626 Newcastle Blvd.
Miramichi, N.B. E1V 2L3

and any such notice, demand, report or other document mailed as aforesaid shall be deemed to have been given, made or received by the party to whom it is directed on the third (3rd) business day following the mailing thereof, or if sent or transmitted by facsimile shall be deemed to have been given, made or received by the party to whom it is directed on the next business day following the day of sending or transmission.

11. It is agreed and understood that in the event of any discrepancy or conflict between the provisions of this Agreement (without reference to Schedule "A" hereto annexed) and the provisions of the Letters of Offer, the provisions of this Agreement (without reference to the said Schedule "A") shall prevail.

12. This Agreement, the Guarantee and the rights and obligations of the parties hereunder are not assignable.

13. No amendment, supplement or waiver of any provision of this Agreement or any other agreements provided for or contemplated, nor any consent to any departure by the Corporation, shall in any event be effective unless it shall be in writing and signed by the Minister and the Bank and then the waiver or consent shall be effective only in the specific instance for the specific purpose for which it has been given.

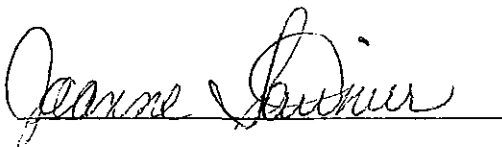
14. This Agreement shall be construed in accordance with the laws of the Province of New Brunswick.

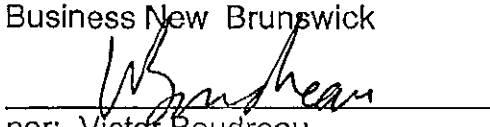
15. This Agreement may be executed by the Parties in counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

THIS AGREEMENT shall extend to and enure to the benefit of and be binding upon the Bank, the Minister and the Corporation, and the respective successors and assigns of the Bank and the Minister and the Corporation.

IN WITNESS WHEREOF the Parties hereto have caused these presents to be duly executed by their proper signing officers in that behalf as of the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of :



) HER MAJESTY THE QUEEN IN
) RIGHT OF THE PROVINCE OF
) NEW BRUNSWICK, as
) represented by the Minister of
) Business New Brunswick
) 
) per: Victor Boudreau
) Minister of Business New Brunswick
)

) THE BANK OF NOVA SCOTIA
)
)
)

per: PATTI DAVIS
DEPUTY MANAGER, CREDIT SOLUTIONS

per: BRIAN PIKE
SENIOR MANAGER, CREDIT SOLUTIONS

) ATCON HOLDINGS INC.
)
)
)

Per: Robert Tozer, President
)
)
)

) THE BANK OF NOVA SCOTIA

)

)

) per: _____

)

)

) per: _____

)

)

)

) ATCON HOLDINGS INC.

)

)

)

) Per Robert Tozer, President

)

)

PROVINCE OF NEW BRUNSWICK
COUNTY OF YORK

I, Joanne Saulnier, of the City of Fredericton, in the
County of York and Province of New Brunswick, MAKE OATH AND SAY:

1. I am an Executive Secretary with the Department of Business New Brunswick, and have a personal knowledge of the matter and things herein deposed to.

2. The within Instrument was executed by the Honourable Victor Boudreau, Minister of Business New Brunswick, of the Province of New Brunswick; that the signature of Victor Boudreau set and subscribed to the said Instrument as that of the Minister of Business New Brunswick is the signature of the said Victor Boudreau and was subscribed thereto in my presence.

SWORN TO at the
City of Fredericton in the
County of York and Province of
New Brunswick this 30th day
of June 2009

BEFORE ME:

John Boudreau
A Commissioner of Oaths
Being A Solicitor

Joanne Saulnier

I, _____, of the _____ of _____, in
the County of _____ in the Province of _____, MAKE
OATH AND SAY:

1. That I am the _____ of The Bank of Nova Scotia ("the Bank")
and have a personal knowledge of the matters and things herein deposed to and
have authority to make this Affidavit on behalf of the Bank.
2. That the _____ is the authorized signing officer to execute
documents in the name and on behalf of the said Bank.
3. That the signature " _____ " affixed to the
foregoing document is my signature and is in the proper handwriting of me this
deponent as _____ of the said Bank.
4. That the Seal affixed to the said document is the corporate seal of the
Bank, and was so affixed by order of the said Bank for the purposes of the
execution of the said document.
5. This document was so executed by the Bank as of the _____ day of
_____, 2009 as and for its act and deed for the uses and purposes
therein expressed and contained.

SWORN TO at the _____ of _____)
in the County of _____, and)
in the Province of _____)
this _____ day of _____ 2009,)

BEFORE ME:)

Commissioner of Oaths,
being a Solicitor)

PROVINCE OF NEW BRUNSWICK

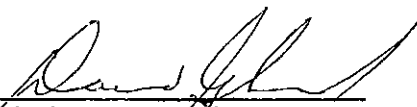
COUNTY OF

I, Robert Tozer, of the City of Miramichi, in the County of Northumberland,
in the Province of New Brunswick, MAKE OATH AND SAY:

1. That I am the President of **ATCON HOLDINGS INC.** ("the Corporation") and have a personal knowledge of the matters and things herein deposed to and have authority to make this Affidavit on behalf of the Corporation.
2. That the President is the authorized signing officer to execute documents in the name and on behalf of the said Corporation.
3. That the signature "Robert Tozer" affixed to the foregoing document is my signature and is in the proper handwriting of me this deponent as the President of the said Corporation.
4. That the Seal affixed to the said document is the corporate seal of the Corporation, and was so affixed by order of the said Corporation for the purposes of the execution of the said document.
5. This document was so executed by the Corporation as of the 30 day of JUNE, 2009 as and for its act and deed for the uses and purposes therein expressed and contained.

SWORN TO at the City of Miramichi,)
in the County of Northumberland,)
in the Province of New Brunswick)
this 30 day of JUNE, 2009,)

BEFORE ME:)



Commissioner of Oaths,
being a Solicitor)





April 24, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance

Please be advised that your request for financial assistance has been assessed and approval has been given to provide a loan guarantee ("Guarantee") to Atcon Holdings Inc. (hereinafter referred to as "Company" or "Atcon") in an amount of up to \$20,000,000 relating to a working capital term loan of up to \$20,000,000 ("Loan") provided or to be provided by a Canadian financial institution ("Bank"). This offer of guarantee is in respect of your business activities headquartered in Miramichi, New Brunswick. This offer is in replacement of and not in addition to an offer dated March 27, 2009 relating to a guarantee of a portion on a revolving operating loan and renders that previous offer null and void.

The liability of the Minister under the Guarantee shall be limited to the lesser of:

- a) \$20,000,000;
- b) the principal balance of the Loan at the time the Bank makes a demand for payment of the Loan; and
- c) the principal balance of the Loan remaining unpaid after the Bank has realized on its security as set forth hereinafter.

Interest on or with respect to the Loan is not guaranteed.

Term and Repayment:

The Guarantee shall reduce by \$5,000,000 on June 30th 2012, and shall terminate not later than the 30th day of June, 2013.

Security and Documentation:

As security for the Guarantee, the Company shall provide the Minister with an agreement by the Bank receiving the Guarantee to hold, and during the continuance of the Guarantee continue to hold, firstly for its own account and secondly for the account of the Minister:

- a) a first charge on the Company's inventories and accounts receivable;
- b) an assignment of any and all accounts receivable insurance proceeds;
- c) a charge on all other assets and undertakings of the Company;
- d) a Subordination Agreement and Agreement of Postponement of Claim on all shareholders' loans.
- e) a guarantee from Atcon Group Inc.; and
- f) a guarantee from Robert Tozer applicable to the Guaranteed Loan, which guarantee shall not attach to the guarantor's principal residence.

In addition, the Company shall provide Indemnity Agreements to the Minister, in a form satisfactory to the Minister from the Company and each of the shareholders.

It is a condition of the Minister that the above-noted security, together with all other security held or to be held as security for the Loan must be realized upon by the Bank prior to any payment by the Minister under the Guarantee.

In the event that the Bank makes a demand for payment of the Loan, the proceeds of the realization of the security shall be applied as follows:

- 1) firstly against costs and expenses, including interest;
- 2) secondly against the indebtedness of the Company to the Bank other than the Guaranteed Loan ; and
- 3) thirdly against the Guaranteed Loan.

Notwithstanding the foregoing, the Bank may, following a demand for payment of all indebtedness of the Company to the Bank, including the Loan, request payment from the Minister of the amount of the Guarantee. In the event of such a request, the Minister shall make payment within 15 working days and the Bank shall, following realizing upon the Security to satisfy the Bank's outstanding loans, assign the remaining security to the Minister.

The Guarantee shall be issued to the Bank at such time as the required legal agreements have been executed by all parties, the Minister has received satisfactory legal opinions with respect to the agreements, and the Company has met all of the prior conditions of this offer.

Prior Conditions:

Prior to the issuance of the Guarantee, the Company shall provide the Minister with:

- a) an undertaking that the guaranteed Loan will be used for the working capital requirements of the Company and for no other purpose;
- b) an agreement by the Company that in the event of any payment being made by the Minister under the Guarantee, the amount so paid shall become an obligation of Atcon Holdings Inc. to be repaid upon demand;
- c) evidence that the Company is in compliance with environmental regulations and that any applicable property tax payments are current;
- d) payment to the Minister of a guarantee charge of 1.5 percent of the amount of the Minister's maximum liability under the Guarantee concurrently with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee;
- e) an undertaking that Atcon shall, within 90 days of the acceptance of this offer, arrange an External Board of Directors or Advisory Board acceptable to the Minister which shall include not less than one member appointed by the Minister, with the frequency of meetings to be held being satisfactory to the Minister;
- f) evidence that Atcon has completed an external review by a firm satisfactory to the Minister of the Company's assets (including receivables, inventories, and "other current assets") indicating results satisfactory to the Minister;
- g) evidence that Atcon has made such administrative changes as are necessary to ensure that any contracts in excess of \$5,000,000 are reviewed by the Advisory Board prior to acceptance, and that the Vice President of Finance recommends acceptance of the contract based on anticipated profit margin and the availability of the working capital required to undertake the contract;
- h) an undertaking to sell or otherwise monetize the highway maintenance contract not later than September 30, 2009, with all proceeds being applied to the Minister's guaranteed loans;
- i) an undertaking to sell or otherwise monetize the Swedish assets as quickly as possible, but in no event later than July 31, 2010, with all proceeds being applied to the Minister's guaranteed loans. The Minister is to be provided with monthly progress reports from the firm which has been engaged to sell the assets, and the company shall undertake not to reject any offer of \$18 million or more;

- j) an agreement from Atcon Group to acknowledge that, while Atcon Construction Inc. may bid on PNB contracts during the duration of the guarantee(s), those bids will be disqualified if there is a bid from another NB company. Additionally, Atcon Construction Inc. shall agree not to seek or accept sub-contracts on projects funded by PNB, save and excepting the supply of aggregate and asphalt in volumes not to exceed the volumes sold during the company's previous fiscal year;
- k) a resolution plan acceptable to the Minister with respect to all outstanding payables owed to New Brunswick companies and the Province of New Brunswick; and
- l) evidence satisfactory to the Minister that the Bank of Nova Scotia will maintain the existing \$40,000,000 revolving credit facility under existing terms and conditions.

Restrictions:

As long as the Guarantee is outstanding, the Company shall not, without the prior written approval of the Minister or the Minister's representative:

- a) make or incur commitments for capital expenditures in excess of \$1,000,000 in any fiscal year whether by purchase or lease;
- b) declare or pay dividends on its capital stock, redeem any preferred or common shares, pay any management fees or bonuses, repay any shareholders' loans or pay interest on same, make any inter company loans or repayment of same except in the normal course of business, nor make loans to, investments in or guarantees on behalf of others;
- c) permit any transactions between the Company and affiliates of the Company unless such transactions are at fair market value and the Minister or a representative of the Minister is accorded the opportunity to review the financial records of the companies involved upon request;
- d) sell or encumber assets in excess of \$500,000 annually except in the ordinary course of business;
- e) allow a change in ownership of the controlling shares of the Company; nor
- f) engage the services of any consultant or consulting firm not at arm's length with the Company.

Compliance:

As long as any amount of the Guarantee is outstanding, the Company shall comply with all of the terms and conditions of the assistance and in addition shall provide the information requested and otherwise comply with the requirements contained in Schedule "A" to this letter.

Other Requirements:

As long as the Guarantee is outstanding, the Company agrees, unless otherwise approved by the Minister or the Minister's representative, to:

- a) be permitted to repay the guaranteed Loan in whole or in part at any time without penalty from the Minister;
- b) maintain fire insurance in an amount no less than 80 percent of replacement value or 80 percent of the cash value of the Company's assets as reasonably determined by the Company, or an amount satisfactory to the Minister or the Minister's representative;
- c) allow a nominee of the Minister to attend any and all meetings of the Company's Board of Directors or Advisory Board should the Minister so request, such nominee to act in an advisory capacity only, without voting privileges, but entitled to all notices of meetings of the Board;
- d) pay and satisfy all taxes, rates, and public charges, due or falling due with respect to the Company and operate the business in a good and businesslike manner;
- e) pay within 30 days of receipt of an invoice from the Minister all costs, charges and expenses incurred by the Minister in association with preparation, execution, filing of documents, protection of security, searching of titles, together with interest thereon for past due amounts at the rate of 10.69 percent per annum until so repaid;
- f) where possible in terms of cost, quality and availability, review and consider the use of New Brunswick goods and services in relation to this project;
- g) make all reasonable efforts to ensure that employees of the Company are provided the opportunity to upgrade skills through training or education;
- h) meet all federal and provincial environmental regulations;
- i) adhere to generally accepted accounting principles (GAAP) in any financial reporting to the Minister; and
- j) pay an annual charge of 1.5 percent of the Minister's maximum liability under the Guarantee concurrent with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee.

Issuance of the Guarantee:

The Guarantee offered herein shall not be issued until all terms and conditions identified herein, together with such other terms and conditions as may be specified by the Minister, have been embodied in formal agreements and security documents satisfactory to the Minister.

Required Information:

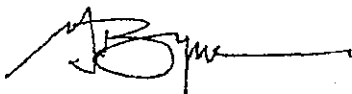
Mr. John Watt of the Business Financial Support Division of the Department of Business New Brunswick will be responsible for the formal documentation and in order that we may proceed with this documentation, the following items should be submitted to the Department:

- a) a certified copy of the Articles of Incorporation and Articles of Amendment of the Company and any corporate shareholder;
- b) a certified copy of the Company's Borrowing By-Law and the by-law respecting signing officers;
- c) a Certificate of Incumbency of the officers of the Corporation indicating those who will be signing the documents;
- d) the name and address of the Company's solicitor;
- e) a list of all existing shareholders and their number of shares;
- f) a list of all existing shareholder loans; and
- g) a statement of any outstanding or pending legal actions against the Company or any of its shareholders, and the current status of any such actions.

If, in the opinion of the Minister, the Company's situation changes in a materially adverse manner or the Company is unable to fulfill the Prior Conditions of this offer within 90 days of the date of acceptance of this offer, the offer may be withdrawn.

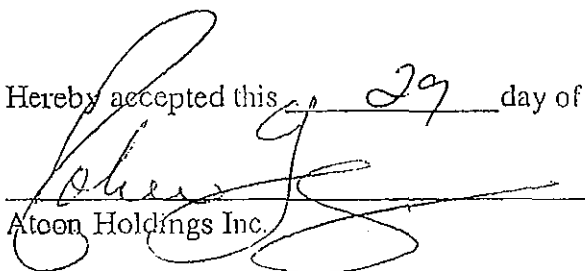
Would you please sign and return the attached copy of this letter where indicated below to signify your agreement with the terms and conditions herein. Please note that, if the offer is not accepted within 30 days of the date of this letter, it will expire and any form of conditional acceptance will render this offer null and void.

Yours truly,



Greg Byrne, Q.C.
Minister

Hereby accepted this 29 day of April, 2009



Atoon Holdings Inc.

Schedule A**Atcon Holdings Inc.****Account Monitoring Plan**

- Submit to the Minister annually, budgets and cash flow projections no later than the end of the prior fiscal year.
- Provide the Minister with the audited annual financial statements of the Company within 120 days of the close of its financial year, and such other statements as the Minister may from time to time require.
- Provide the Minister with a copy of the auditor's management letter and the response to that letter.
- Provide the Minister with the Company's quarterly financial statements with comparison to budget, including profit and loss statements and balance sheets, all in formats satisfactory to the Minister, 30 days after each quarter end.
- Provide the Minister with reports on orders booked, sales levels and employment levels, should the Minister so request.
- Allow a representative of the Minister access to all the facilities of the Company and the books and records of the Company.



June 9, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance

I refer herein to three letters of offer dated April 24, 2009 regarding loan guarantees in the amounts of \$10,000,000, \$20,000,000 and \$20,000,000.

The Prior Conditions contained in those letters are hereby amended as follows:

1) by deleting clause j) and replacing it with a revised clause j) to read:

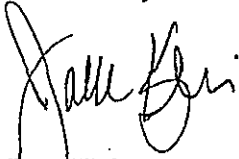
“An agreement from Atcon Group Inc. that Atcon companies engaged in the construction sector (as hereinafter defined) may bid on PNB funded contracts excluding P3 projects while the financial assistance by way of loan guarantee(s) is in effect but that upon notification by PNB of a competitive bid from another New Brunswick company, the Atcon company shall withdraw its bid and remove itself from consideration for participation or other involvement in the project in question. This restriction and undertaking shall apply to contracts in which the Atcon company is a prime contractor or sub contractor but does not apply to contracts for the supply of aggregate and asphalt so long as the quantities and volumes do not exceed the quantities and volumes sold during that company's 2009 fiscal year.

Atcon Group Inc. further acknowledges that while Brunway Group or other joint venture involving Atcon companies may bid on P3 projects in New Brunswick, Atcon companies shall not perform construction sector work under the P3 project contract(s) without the express written consent of the Minister or the Minister's representative.

"Atcon companies" includes any company, limited partnership, partnership or trust in which Atcon Group Inc., Atcon Holdings Inc. or Robert Tozer holds an equity position, has a contractual right to obtain an equity position or holds any beneficial right or interest whatsoever. "Construction sector" includes, but is not limited to, highway construction and paving."

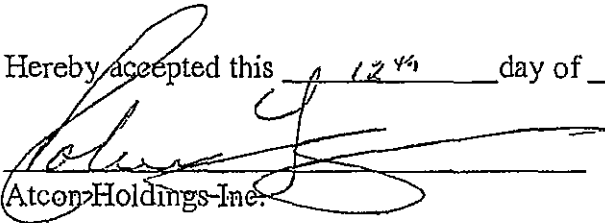
Would you please sign and return the attached copy of this letter where indicated below to signify your agreement with the terms and conditions herein. Please note that, if the offer is not accepted within 30 days of the date of this letter, it will expire and any form of conditional acceptance will render this offer null and void.

Yours truly,



Jack Keir
Acting Minister

Hereby accepted this 12th day of JUNE, 2009


Atcon Holdings Inc.

Subordinated Debt Guarantee

THIS GUARANTEE AGREEMENT made as of this 30th day of June, 2009.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK, as represented by the Minister of Business New Brunswick, (hereinafter called the "Minister")

OF THE FIRST PART

AND:

THE BANK OF NOVA SCOTIA, a chartered Canadian bank under the laws of Canada, (hereinafter called the "Bank")

OF THE SECOND PART

AND:

ATCON HOLDINGS INC., body corporate, duly incorporated under and by virtue of the laws of New Brunswick, (hereinafter called the "Corporation")

OF THE THIRD PART


WHEREAS the Bank has extended or has agreed to extend to the Corporation a loan in an amount of up to \$20,000,000.00 (the "Loan") to assist the Corporation with the repayment of existing subordinated debt;

AND WHEREAS the principal amount under or in respect of the aforesaid Loan is hereinafter called the "Principal Sum";

AND WHEREAS at the request of the Corporation, the Minister has agreed to guarantee to the Bank the repayment of all or a portion of the Principal Sum in accordance with the terms and conditions herein set forth.

Exhibit #60

December 7, 2010


Blackwell Court Reporting

60



NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the Minister giving the guarantee herein contained, and in consideration of the sum of Ten Dollars (\$10.00) paid by each of the parties hereto to the other of them, the receipt whereof by each of them is hereby acknowledged, and in consideration of the Bank agreeing to deal with or to continue to deal with the Corporation in the way of its business as a bank, and in further consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Minister hereby guarantees to the Bank the repayment of that portion of the Principal Sum from time to time which is limited to the lesser of:

- (a) \$20,000,000.00;
- (b) \$20,000,000.00 less the amount of principal repayments made to the Bank to be applied to the reduction of the Principal Sum; or
- (c) the amount of the Principal Sum outstanding on the Loan at the time that the Bank makes a demand for payment.

This Guarantee shall terminate on 31 July 2010 unless on or before such date a request for payment on the Guarantee is made by the Bank upon the Minister, and shall be subject always to the terms and conditions herein set forth. For greater certainty, interest on the Loan is not guaranteed.

2. As security for the repayment or payment, when due, of the Principal Sum, it is understood that the Bank will hold and during the continuance of the Guarantee shall continue to hold security in form and substance substantially the same as that held by the subordinated debt lenders whose loans are being repaid by the Loan. Notwithstanding the generality of the foregoing, the Bank shall hold a first charge security position over Atcon Group Inc.'s assets in

Sweden and its interest in the Brunway highway maintenance contract. The Bank shall also obtain a guarantee from Atcon Group Inc. and a guarantee from Robert Tozer (which guarantee shall not attach to the guarantor's principal residence), all in form satisfactory to the Minister, which security held or to be held by the Bank under this Clause, together with all other guarantees and other security of whatsoever nature or kind from time to time held by the Bank, in whole or in part, as security for the Principal Sum, is hereinafter collectively called the "Security".

3. It is agreed and understood that in the event Bank demands full payment of the Loan from the Corporation, and provided that no repayment of the Loan has been made by the Corporation within 10 days of the demand or within such longer period of time as the Bank, in its discretion, may determine to be reasonable, Bank shall, forthwith thereafter, notify the Minister of such demand. Upon receipt of such demand, the Minister shall forthwith make payment to the Bank and the Bank shall assign the Security to the Minister.

4. Any payment made or to be made by the Minister hereunder shall be applied against the balance of the Principal Sum existing at the time of demand that remains outstanding and unpaid at the date of such payment.

5. The Bank shall furnish to the Minister a report indicating the amount of the Loan annually during the term of the Guarantee; provided always that the failure of the Bank to comply with this Clause shall not be grounds for invalidating the Guarantee unless written notice of such failure shall have been given by the Minister to the Bank and the Bank within ten (10) days of the giving of such notice has not remedied such default.

6. Subject to Clause 5 hereof, the Guarantee and the obligations and liability

of the Minister under the Guarantee shall be conditional upon the Bank complying fully with each of its obligations under this Agreement. The failure of the Corporation to comply with its obligations under this Agreement shall not invalidate the Guarantee.

7. The Bank shall not at any time while the Loan, or any part thereof, remains outstanding and unpaid release or discharge the Security, or any part thereof, that the Bank holds without the prior written consent of the Minister or of an agent or representative of the Minister.

8. The Corporation agrees to immediately reimburse to the Minister all amounts paid or payable by the Minister to the Bank under or in respect of the Guarantee, together with interest on such amounts from and after the date the Minister makes payment thereof to the Bank at the rate of four and six tenths percent ($4\frac{6}{10}\%$) per annum, calculated half-yearly, not in advance, until paid, with interest on overdue interest at the said rate.

9. The Corporation does hereby covenant and agree with the Minister to observe, perform and satisfy each and every of those terms, conditions undertakings, agreements, restrictions, requirements, duties and obligations on the Corporation's part to be observed, performed or satisfied that are set forth, contained or referred to in those certain letters from the Minister addressed to the Corporation, dated the 24th day of April 2009 and the 9th day of June 2009 copies of which letters (hereinafter called the "Letters of Offer") are attached hereto as Schedule "A". The failure of the Corporation to comply with its obligations under this Agreement, including the Letters of Offer, shall not invalidate the Guarantee and the Minister's obligations to the Bank thereunder.

10. All notices, demands, reports and other documents required, mentioned, permitted or contemplated under this Agreement shall be sufficiently given,

made or received if in writing and served personally, or if mailed postage prepaid by registered mail at any post office in Canada or sent by facsimile, at the address shown below or at such other address or addresses as the party or parties to whom such notice, demand, report or other document is directed shall have last notified the party or parties giving the writing or document, in accordance with the provisions of this Clause:

- (a) if directed to the Minister, to:

Minister of Business New Brunswick
P. O. Box 6000
Fredericton, N.B. E3B 5H1

- (b) if directed to the Bank, to:

The Bank of Nova Scotia
Attention: Patricia Davis, Senior Manager
1709 Hollis Street, 4th Floor
Halifax, NS B3J 2M1
Telephone: 902-420-6167 Fax: 902-425-8100

- (c) if directed to the Corporation, to:

Robert Tozer, President
626 Newcastle Blvd.
Miramichi, N.B. E1V 2L3

and any such notice, demand, report or other document mailed as aforesaid shall be deemed to have been given, made or received by the party to whom it is directed on the third (3rd) business day following the mailing thereof, or if sent or transmitted by facsimile shall be deemed to have been given, made or received by the party to whom it is directed on the next business day following the day of sending or transmission.

11. It is agreed and understood that in the event of any discrepancy or conflict between the provisions of this Agreement (without reference to Schedule "A"

hereto annexed) and the provisions of the Letters of Offer, the provisions of this Agreement (without reference to the said Schedule "A") shall prevail.

12. This Agreement, the Guarantee and the rights and obligations of the parties hereunder are not assignable.

13. No amendment, supplement or waiver of any provision of this Agreement or any other agreements provided for or contemplated, nor any consent to any departure by the Corporation, shall in any event be effective unless it shall be in writing and signed by the Minister and the Bank and then the waiver or consent shall be effective only in the specific instance for the specific purpose for which it has been given.

14. This Agreement shall be construed in accordance with the laws of the Province of New Brunswick.

15. This Agreement may be executed by the Parties in counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

THIS AGREEMENT shall extend to and enure to the benefit of and be binding upon the Bank, the Minister and the Corporation, and the respective successors and assigns of the Bank and the Minister and the Corporation.

IN WITNESS WHEREOF the Parties hereto have caused these presents to be duly executed by their proper signing officers in that behalf as of the day and year first above written.

James Warner

) HER MAJESTY THE QUEEN IN
) RIGHT OF THE PROVINCE OF
) NEW BRUNSWICK,
) as represented by the Minister of
) Business, New Brunswick

per: Victor Boudreau
Minister of Business New Brunswick

) THE BANK OF NOVA SCOTIA
)
)
)
)
) _____
) per:
)
)
) _____
) per:

Age Group	Percentage
18-24	10%
25-34	20%
35-44	25%
45-54	20%
55-64	15%
65-74	10%
75-84	5%
85+	5%

) ATCON HOLDINGS INC.
)
)
)
)
)
) Per: Robert Tozer, President
)
)

) HER MAJESTY THE QUEEN IN
) RIGHT OF THE PROVINCE OF
) NEW BRUNSWICK,
) as represented by the Minister of
) Business New Brunswick

per: Victor Boudreau
Minister of Business New Brunswick

THE BANK OF NOVA SCOTIA

per:

per:

ATCON HOLDINGS INC.

Per: (Robert Tozer, President)

per: Victor Boudreau
Minister of Business New Brunswick

per: PATTI DAVIS
DEPUTY MANAGER, CREDIT SOLUTIONS

per: BRIAN PACE
SENIOR MANAGER, CREDIT SOLUTIONS

)
)
)
)
) Per: Robert Tozer, President
)
)

PROVINCE OF NEW BRUNSWICK
COUNTY OF YORK

I, Joanne Saulnier, of the City of Fredericton, in the
County of York and Province of New Brunswick, MAKE OATH AND SAY:

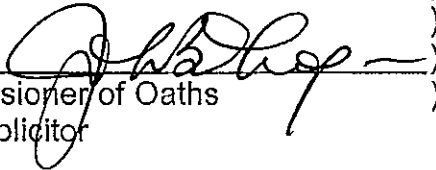
1. I am an Executive Secretary with the Department of Business New Brunswick, and have a personal knowledge of the matter and things herein deposed to.

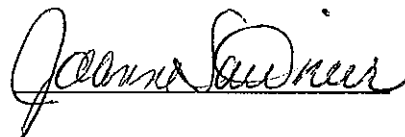
2. The within Instrument was executed by the Honourable Victor Boudreau, Minister of Business New Brunswick, of the Province of New Brunswick; that the signature of Victor Boudreau set and subscribed to the said Instrument as that of the Minister of Business New Brunswick is the signature of the said Victor Boudreau and was subscribed thereto in my presence.

SWORN TO at the
City of Fredericton in the
County of York and Province of
New Brunswick this 30th day

of June 2009

BEFORE ME:


A Commissioner of Oaths
Being A Solicitor



I, _____, of the _____ of _____, in
the County of _____ in the Province of _____, MAKE
OATH AND SAY:

1. That I am the _____ of The Bank of Nova Scotia ("the Bank")
and have a personal knowledge of the matters and things herein deposed to and
have authority to make this Affidavit on behalf of the Bank.
2. That the _____ is the authorized signing officer to execute
documents in the name and on behalf of the said Bank.
3. That the signature " _____ " affixed to the
foregoing document is my signature and is in the proper handwriting of me this
deponent as _____ of the said Bank.
4. That the Seal affixed to the said document is the corporate seal of the
Bank, and was so affixed by order of the said Bank for the purposes of the
execution of the said document.
5. This document was so executed by the Bank as of the _____ day of
_____, 2009 as and for its act and deed for the uses and purposes
therein expressed and contained.

SWORN TO at the _____ of _____)
in the County of _____, and)
in the Province of _____)
this _____ day of _____ 2009,)

BEFORE ME:)

Commissioner of Oaths,
being a Solicitor)

PROVINCE OF NEW BRUNSWICK

COUNTY OF

I, Robert Tozer, of the City of Miramichi, in the County of Northumberland,
in the Province of New Brunswick, MAKE OATH AND SAY:

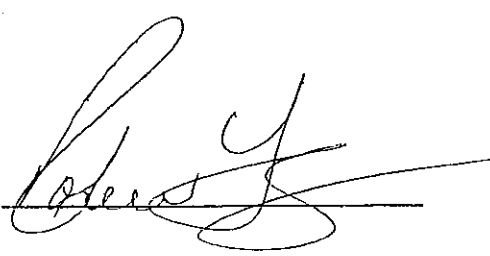
1. That I am the President of **ATCON HOLDINGS INC.** ("the Corporation") and have a personal knowledge of the matters and things herein deposed to and have authority to make this Affidavit on behalf of the Corporation.
2. That the President is the authorized signing officer to execute documents in the name and on behalf of the said Corporation.
3. That the signature "Robert Tozer" affixed to the foregoing document is my signature and is in the proper handwriting of me this deponent as the President of the said Corporation.
4. That the Seal affixed to the said document is the corporate seal of the Corporation, and was so affixed by order of the said Corporation for the purposes of the execution of the said document.
5. This document was so executed by the Corporation as of the 30 day of JUNE, 2009 as and for its act and deed for the uses and purposes therein expressed and contained.

SWORN TO at the City of Miramichi,)
in the County of Northumberland,)
in the Province of New Brunswick)
this 30 day of JUNE, 2009,)

BEFORE ME:)



Commissioner of Oaths,
being a Solicitor)





April 24, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance

Please be advised that your request for financial assistance has been assessed and approval has been given to provide a loan guarantee ("Guarantee") to a Canadian financial institution ("Bank") to secure a loan for Atcon Holdings Inc. (hereinafter referred to as "Company" or "Atcon") in an amount of up to \$20,000,000 (the "Loan"). This offer is replacement of and not in addition to an offer dated March 27, 2009 relating to a \$20,000,000 loan guarantee and renders that previous offer null and void.

The proceeds of the Loan shall be used to repay existing subordinated debt, and for no other purpose.

Term and payment:

The Minister's liability under the Guarantee shall not exceed \$20,000,000.

Interest on or with respect to the Loan is not guaranteed.

The Guarantee shall be issued to the Bank at such time as the required legal agreements have been executed by all parties, the Minister has received satisfactory legal opinions with respect to the agreements, and the Company has met all of the prior conditions of this offer.

The Guarantee shall terminate on July 31, 2010 or on such earlier date upon which the Loan is repaid in full, unless on or before such date(s), the Bank has issued a demand for payment under the Guarantee.

Upon receipt of a demand for payment from the Bank, the Minister shall forthwith make payment to the Bank and the Bank shall forthwith assign its security to the Minister.

Security and Documentation:

As security for the Loan to be provided under the Guarantee, the Bank shall hold security in form and substance the same as that security presently held by the existing subordinated debt lenders, including but not limited to a first charge security positions over Atcon Group Inc.'s assets in Sweden, and its interest in the Brunway highway maintenance contract.

The Bank shall also hold a guarantee from Atcon Group Inc., and a guarantee from Robert Tozer (which guarantee shall not attach to the guarantor's principal residence).

In addition, the Company shall provide Indemnity Agreements to the Minister, in a form satisfactory to the Minister from the Company and each of the shareholders.

Prior Conditions:

Prior to the issuance of the Guarantee, the Company shall provide the Minister with:

- a) an undertaking that the guaranteed Loan will be used to repay existing subordinated debt and for no other purpose;
- b) an agreement by the Company that in the event of any payment being made by the Minister under the Guarantee, the amount so paid shall become an obligation of Atcon Holdings Inc. to be repaid upon demand;
- c) evidence that the Company is in compliance with environmental regulations and that any applicable property tax payments are current;
- d) payment to the Minister of a guarantee charge of 1.5 percent of the amount of the Minister's maximum liability under the Guarantee concurrently with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee;
- e) an undertaking that Atcon shall, within 90 days of the acceptance of this offer, arrange an External Board of Directors or Advisory Board acceptable to the Minister which shall include not less than one member appointed by the Minister, with the frequency of meetings to be held being satisfactory to the Minister;
- f) evidence that Atcon has completed an external review by a firm satisfactory to the Minister of the Company's assets (including receivables, inventories, and "other current assets") indicating results satisfactory to the Minister;

- g) evidence that Atcon has made such administrative changes as are necessary to ensure that any contracts in excess of \$5,000,000 are reviewed by the Advisory Board prior to acceptance, and that the Vice President of Finance recommends acceptance of the contract based on anticipated profit margin and the availability of the working capital required to undertake the contract;
- h) an undertaking to sell or otherwise monetize the highway maintenance contract not later than September 30, 2009, with all proceeds being applied to the Minister's guaranteed loans;
- i) an undertaking to sell or otherwise monetize the Swedish assets as quickly as possible, but in no event later than July 31, 2010, with all proceeds being applied to the Minister's guaranteed loans. The Minister is to be provided with monthly progress reports from the firm which has been engaged to sell the assets, and the company shall undertake not to reject any offer of \$18 million or more;
- j) an agreement from Atcon Group to acknowledge that, while Atcon Construction Inc. may bid on PNB contracts during the duration of the guarantee(s), those bids will be disqualified if there is a bid from another NB company. Additionally, Atcon Construction Inc. shall agree not to seek or accept sub-contracts on projects funded by PNB, save and excepting the supply of aggregate and asphalt in volumes not to exceed the volumes sold during the company's previous fiscal year; and
- k) a resolution plan acceptable to the Minister with respect to all outstanding payables owed to New Brunswick companies and the Province of New Brunswick.

Restrictions:

As long as the Guarantee is outstanding, the Company shall not, without the prior written approval of the Minister or the Minister's representative:

- a) make or incur commitments for capital expenditures in excess of \$1,000,000 in any fiscal year whether by purchase or lease;
- b) declare or pay dividends on its capital stock, redeem any preferred or common shares, pay any management fees or bonuses, repay any shareholders' loans or pay interest on same, make any inter company loans or repayment of same except in the normal course of business, nor make loans to, investments in or guarantees on behalf of others;
- c) permit any transactions between the Company and affiliates of the Company unless such transactions are at fair market value and the Minister or a representative of the Minister is accorded the opportunity to review the financial records of the companies involved upon request;
- d) sell or encumber assets in excess of \$500,000 annually except in the ordinary course of business;

- e) allow a change in ownership of the controlling shares of the Company; nor
- f) engage the services of any consultant or consulting firm not at arm's length with the Company.

Compliance:

As long as any amount of the Guarantee is outstanding, the Company shall comply with all of the terms and conditions of the assistance and in addition shall provide the information requested and otherwise comply with the requirements contained in Schedule "A" to this letter.

Other Requirements:

As long as the Guarantee is outstanding, the Company agrees, unless otherwise approved by the Minister or the Minister's representative, to:

- a) be permitted to repay the guaranteed Loan in whole or in part at any time without penalty from the Minister;
- b) maintain fire insurance in an amount no less than 80 percent of replacement value or 80 percent of the cash value of the Company's assets as reasonably determined by the Company, or an amount satisfactory to the Minister or the Minister's representative;
- c) allow a nominee of the Minister to attend any and all meetings of the Company's Board of Directors or Advisory Board should the Minister so request, such nominee to act in an advisory capacity only, without voting privileges, but entitled to all notices of meetings of the Board;
- d) pay and satisfy all taxes, rates, and public charges, due or falling due with respect to the Company and operate the business in a good and businesslike manner;
- e) pay within 30 days of receipt of an invoice from the Minister all costs, charges and expenses incurred by the Minister in association with preparation, execution, filing of documents, protection of security, searching of titles, together with interest thereon for past due amounts at the rate of 10.69 percent per annum until so repaid;
- f) where possible in terms of cost, quality and availability, review and consider the use of New Brunswick goods and services in relation to this project;
- g) make all reasonable efforts to ensure that employees of the Company are provided the opportunity to upgrade skills through training or education;
- h) meet all federal and provincial environmental regulations;

- i) adhere to generally accepted accounting principles (GAAP) in any financial reporting to the Minister; and
- j) pay an annual charge of 1.5 percent of the Minister's maximum liability under the Guarantee concurrent with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee.

Issuance of the Guarantee:

The Guarantee offered herein shall not be issued until all terms and conditions identified herein, together with such other terms and conditions as may be specified by the Minister, have been embodied in formal agreements and security documents satisfactory to the Minister.

Required Information:

Mr. John Watt of the Business Financial Support Division of the Department of Business New Brunswick will be responsible for the formal documentation and in order that we may proceed with this documentation, the following items should be submitted to the Department:

- a) a certified copy of the Articles of Incorporation and Articles of Amendment of the Company and any corporate shareholder;
- b) a certified copy of the Company's Borrowing By-Law and the by-law respecting signing officers;
- c) a Certificate of Incumbency of the officers of the Corporation indicating those who will be signing the documents;
- d) the name and address of the Company's solicitor;
- e) a list of all existing shareholders and their number of shares;
- f) a list of all existing shareholder loans; and
- g) a statement of any outstanding or pending legal actions against the Company or any of its shareholders, and the current status of any such actions.

If, in the opinion of the Minister, the Company's situation changes in a materially adverse manner or the Company is unable to fulfill the Prior Conditions of this offer within 90 days of the date of acceptance of this offer, the offer may be withdrawn.

Would you please sign and return the attached copy of this letter where indicated below to signify your agreement with the terms and conditions herein. Please note that, if the offer is not accepted within 30 days of the date of this letter, it will expire and any form of conditional acceptance will render this offer null and void.

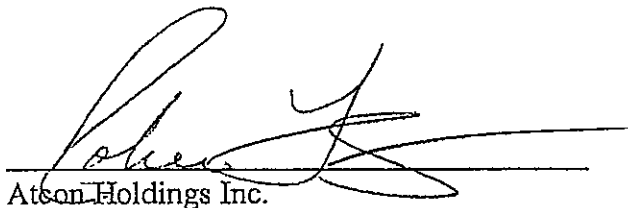
Yours truly,



Greg Byrne, Q.C.
Minister

cc: John Watt

Hereby accepted this 29 day of April, 2009


Atson Holdings Inc.

Schedule A**Atcon Holdings Inc.****Account Monitoring Plan**

- Submit to the Minister annually, budgets and cash flow projections no later than the end of the prior fiscal year.
- Provide the Minister with the audited annual financial statements of the Company within 120 days of the close of its financial year, and such other statements as the Minister may from time to time require.
- Provide the Minister with a copy of the auditor's management letter and the response to that letter.
- Provide the Minister with the Company's quarterly financial statements with comparison to budget, including profit and loss statements and balance sheets, all in formats satisfactory to the Minister, 30 days after each quarter end.
- Provide the Minister with reports on orders booked, sales levels and employment levels, should the Minister so request.
- Allow a representative of the Minister access to all the facilities of the Company and the books and records of the Company.



June 9, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance

I refer herein to three letters of offer dated April 24, 2009 regarding loan guarantees in the amounts of \$10,000,000, \$20,000,000 and \$20,000,000.

The Prior Conditions contained in those letters are hereby amended as follows:

1) by deleting clause j) and replacing it with a revised clause j) to read:

"An agreement from Atcon Group Inc. that Atcon companies engaged in the construction sector (as hereinafter defined) may bid on PNB funded contracts excluding P3 projects while the financial assistance by way of loan guarantee(s) is in effect but that upon notification by PNB of a competitive bid from another New Brunswick company, the Atcon company shall withdraw its bid and remove itself from consideration for participation or other involvement in the project in question. This restriction and undertaking shall apply to contracts in which the Atcon company is a prime contractor or sub contractor but does not apply to contracts for the supply of aggregate and asphalt so long as the quantities and volumes do not exceed the quantities and volumes sold during that company's 2009 fiscal year.

Atcon Group Inc. further acknowledges that while Brunway Group or other joint venture involving Atcon companies may bid on P3 projects in New Brunswick, Atcon companies shall not perform construction sector work under the P3 project contract(s) without the express written consent of the Minister or the Minister's representative.

Ministre/Ministre

Business/New Brunswick/Entreprises Nouveau-Brunswick

P.O. Box 6000 Fredericton New Brunswick/Nouveau-Brunswick E3B 5H1 Canada Tel./Tél. (506) 453-5898 Fax/Téléc. (506) 453-5893

www.gnb.ca



"Atcon companies" includes any company, limited partnership, partnership or trust in which Atcon Group Inc., Atcon Holdings Inc. or Robert Tozer holds an equity position, has a contractual right to obtain an equity position or holds any beneficial right or interest whatsoever. "Construction sector" includes, but is not limited to, highway construction and paving."

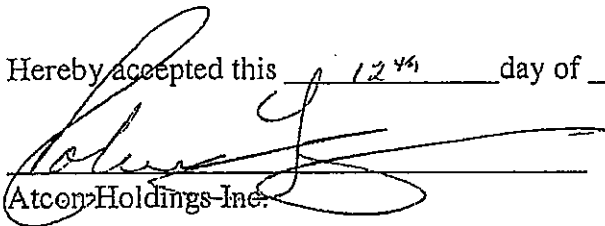
Would you please sign and return the attached copy of this letter where indicated below to signify your agreement with the terms and conditions herein. Please note that, if the offer is not accepted within 30 days of the date of this letter, it will expire and any form of conditional acceptance will render this offer null and void.

Yours truly,



Jack Keir
Acting Minister

Hereby accepted this 12th day of JUNE, 2009


Atcon Holdings Inc.

on # 61
MB

1300 A159-1

Capital Expenditure Guarantee

THIS GUARANTEE AGREEMENT made as of this 30th day of June, 2009.

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK, as represented by the Minister of Business New Brunswick, (hereinafter called the "Minister")

OF THE FIRST PART

A N D:

THE BANK OF NOVA SCOTIA, a chartered Canadian bank under the laws of Canada, (hereinafter called the "Bank")

OF THE SECOND PART

A N D:

ATCON HOLDINGS INC., body corporate, duly incorporated under and by virtue of the laws of New Brunswick, (hereinafter called the "Corporation")

OF THE THIRD PART

WHEREAS the Bank has extended or has agreed to extend to the Corporation a loan in an amount of up to \$10,000,000.00 (the "Loan") to assist the Corporation with capital expenditures associated with the completion of Atcon Industrial Services Inc.'s Miramichi, New Brunswick facilities ("the Facility");

AND WHEREAS the principal amount under or in respect of the aforesaid Loan is hereinafter called the "Principal Sum";

AND WHEREAS at the request of the Corporation, the Minister has agreed to guarantee to the Bank the repayment of all or a portion of the Principal Sum in accordance with the terms and conditions herein set forth.

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the Minister giving the guarantee herein contained, and in consideration of the sum of Ten Dollars (\$10.00) paid by each of the parties hereto to the other of them, the receipt whereof by each of them is hereby acknowledged, and in consideration of the Bank agreeing to deal with or to continue to deal with the Corporation in the way of its business as a bank, and in further consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Minister hereby guarantees to the Bank the repayment of that portion of the Principal Sum from time to time which is limited to the lesser of:

- (a) \$10,000,000.00 or such lesser amount as the Minister may have authorized the Bank to advance to the Corporation;
- (b) \$10,000,000.00 less the amount of principal repayments made to the Bank to be applied to the reduction of the Principal Sum; or
- (c) the amount of the Principal Sum outstanding on the Loan at the time that the Bank makes a demand for payment.

This Guarantee shall terminate on that date in 2017 which is eight years following the date hereof, unless on or before such date a request for payment on the Guarantee is made by the Bank upon the Minister, and shall be subject always to the terms and conditions herein set forth. For greater certainty, interest on the Loan is not guaranteed.

2. As security for the repayment or payment, when due, of the Principal Sum, it is understood that the Bank will hold and during the continuance of the Guarantee shall continue to hold a General Security Agreement over the assets

of the Atcon Industrial Services Inc., a charge against real property owned by Atcon Industrial Services Inc. and that of Atcon Construction Inc occupied by Atcon Industrial Services Inc., a guarantee from Atcon Group Inc. and a guarantee from Robert Tozer (which guarantee shall not attach to the guarantor's principal residence), all in form satisfactory to the Minister, which security held or to be held by the Bank under this Clause, together with all other guarantees and other security of whatsoever nature or kind from time to time held by the Bank, in whole or in part, as security for the Principal Sum, is hereinafter collectively called the "Security".

3. It is agreed and understood that in the event Bank demands full payment of the Loan from the Corporation, and provided that no repayment of the Loan has been made by the Corporation within 10 days of the demand or within such longer period of time as the Bank, in its discretion, may determine to be reasonable, the Bank shall, forthwith thereafter, notify the Minister of such demand. Upon receipt of such demand, the Minister shall forthwith make payment to the Bank and the Bank shall assign the Security to the Minister.

4. Any payment made or to be made by the Minister hereunder shall be applied against the balance of the Principal Sum existing at the time of demand that remains outstanding and unpaid at the date of such payment.

5. The Bank shall furnish to the Minister a report indicating the amount of the Loan annually during the term of the Guarantee; provided always that the failure of the Bank to comply with this Clause shall not be grounds for invalidating the Guarantee unless written notice of such failure shall have been given by the Minister to the Bank and the Bank within ten (10) days of the giving of such notice has not remedied such default.

6. Subject to Clause 6 hereof, the Guarantee and the obligations and liability of the Minister under the Guarantee shall be conditional upon the Bank complying fully with each of its obligations under this Agreement. The failure of the Corporation to comply with its obligations under this Agreement shall not invalidate the Guarantee.

7. The Bank shall not at any time while the Loan, or any part thereof, remains outstanding and unpaid release or discharge the Security, or any part thereof, that the Bank holds without the prior written consent of the Minister or of an agent or representative of the Minister.

8. The Corporation agrees to immediately reimburse to the Minister all amounts paid or payable by the Minister to the Bank under or in respect of the Guarantee, together with interest on such amounts from and after the date the Minister makes payment thereof to the Bank at the rate of four and six tenths percent ($4\frac{6}{10}\%$) per annum, calculated half-yearly, not in advance, until paid, with interest on overdue interest at the said rate.

9. The Corporation does hereby covenant and agree with the Minister to observe, perform and satisfy each and every of those terms, conditions undertakings, agreements, restrictions, requirements, duties and obligations on the Corporation's part to be observed, performed or satisfied that are set forth, contained or referred to in those certain letters from the Minister addressed to the Corporation, dated the 24th day of April 2009 and the 9th day of June 2009 copies of which letters (hereinafter called the "Letters of Offer") are attached hereto as Schedule "A". The failure of the Corporation to comply with its obligations under this Agreement, including the Letters of Offer, shall not invalidate the Guarantee and the Minister's obligations to the Bank thereunder.

10. All notices, demands, reports and other documents required, mentioned,

permitted or contemplated under this Agreement shall be sufficiently given, made or received if in writing and served personally, or if mailed postage prepaid by registered mail at any post office in Canada or sent by facsimile, at the address shown below or at such other address or addresses as the party or parties to whom such notice, demand, report or other document is directed shall have last notified the party or parties giving the writing or document, in accordance with the provisions of this Clause:

- (a) if directed to the Minister, to:

Minister of Business New Brunswick
P. O. Box 6000
Fredericton, N.B. E3B 5H1

- (b) if directed to the Bank, to:

The Bank of Nova Scotia
Attention: Patricia Davis, Senior Manager
1709 Hollis Street, 4th Floor
Halifax, NS B3J 2M1
Telephone: 902-420-6167 Fax: 902-425-8100

- (c) if directed to the Corporation, to:

Robert Tozer, President
626 Newcastle Blvd.
Miramichi, N.B. E1V 2L3

and any such notice, demand, report or other document mailed as aforesaid shall be deemed to have been given, made or received by the party to whom it is directed on the third (3rd) business day following the mailing thereof, or if sent or transmitted by facsimile shall be deemed to have been given, made or received by the party to whom it is directed on the next business day following the day of sending or transmission.

11. It is agreed and understood that in the event of any discrepancy or conflict between the provisions of this Agreement (without reference to Schedule "A" hereto annexed) and the provisions of the Letters of Offer, the provisions of this Agreement (without reference to the said Schedule "A") shall prevail.

12 This Agreement, the Guarantee and the rights and obligations of the parties hereunder are not assignable.

13 No amendment, supplement or waiver of any provision of this Agreement or any other agreements provided for or contemplated, nor any consent to any departure by the Corporation, shall in any event be effective unless it shall be in writing and signed by the Minister and the Bank and then the waiver or consent shall be effective only in the specific instance for the specific purpose for which it has been given.

14. This Agreement shall be construed in accordance with the laws of the Province of New Brunswick.

15, This Agreement may be executed by the Parties in counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

THIS AGREEMENT shall extend to and enure to the benefit of and be binding upon the Bank, the Minister and the Corporation, and the respective successors and assigns of the Bank and the Minister and the Corporation.

IN WITNESS WHEREOF the Parties hereto have caused these presents to be duly executed by their proper signing officers in that behalf as of the day and year first above written.

Joanna Turner

) HER MAJESTY THE QUEEN IN
) RIGHT OF THE PROVINCE OF
) NEW BRUNSWICK,
) as represented by the Minister of
) Business New Brunswick

per: Honourable Victor Boudreau

) THE BANK OF NOVA SCOTIA

) per:

) per:

) ATCON HOLDINGS INC.

Per: Robert Tozer, President

Joann Sauer

) HER MAJESTY THE QUEEN IN
) RIGHT OF THE PROVINCE OF
) NEW BRUNSWICK,
) as represented by the Minister of
) Business New Brunswick

per: Honourable Victor Boudreau

) THE BANK OF NOVA SCOTIA

per: Patti Davis
Deputy Manager, Credit Solutions

per: Brian Pike
Senior Manager, Credit Solutions

) ATCON HOLDINGS INC.

) Per: Robert Tozer, President

) HER MAJESTY THE QUEEN IN
) RIGHT OF THE PROVINCE OF
) NEW BRUNSWICK,
) as represented by the Minister of
) Business New Brunswick

per: Honourable Victor Boudreau

THE BANK OF NOVA SCOTIA

per:

per:

ATCON HOLDINGS INC.

Per: Robert Tozer, President

PROVINCE OF NEW BRUNSWICK
COUNTY OF YORK

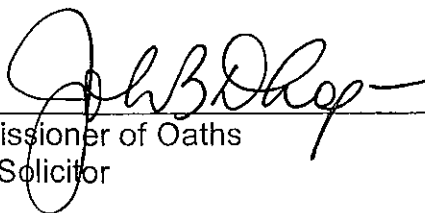
I, Joanne Saulnier, of the City of Fredericton, in the
County of York and Province of New Brunswick, MAKE OATH AND SAY:

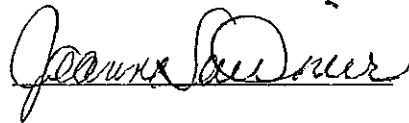
1. I am an Executive Secretary with the Department of Business New
Brunswick, and have a personal knowledge of the matter and things herein
deposed to.

2. The within Instrument was executed by the Honourable Victor Boudreau,
Minister of Business New Brunswick, of the Province of New Brunswick; that the
signature of Victor Boudreau set and subscribed to the said Instrument as that of
the Minister of Business New Brunswick is the signature of the said Victor
Boudreau and was subscribed thereto in my presence.

SWORN TO at the
City of Fredericton in the
County of York and Province of
New Brunswick this 30th day
of June 2009

BEFORE ME:


A Commissioner of Oaths
Being A Solicitor



I, _____, of the _____ of _____, in the
County of _____ in the Province of _____, MAKE
OATH AND SAY:

1. That I am the _____ of The Bank of Nova Scotia ("the Bank")
and have a personal knowledge of the matters and things herein deposed to and
have authority to make this Affidavit on behalf of the Bank.
2. That the _____ is the authorized signing officer to execute
documents in the name and on behalf of the said Bank.
3. That the signature " _____ " affixed to the
foregoing document is my signature and is in the proper handwriting of me this
deponent as _____ of the said Bank.
4. That the Seal affixed to the said document is the corporate seal of the
Bank, and was so affixed by order of the said Bank for the purposes of the
execution of the said document.
5. This document was so executed by the Bank as of the _____ day of
_____, 2009 as and for its act and deed for the uses and purposes
therein expressed and contained.

SWORN TO at the _____ of _____)
in the County of _____, and)
in the Province of _____)
this _____ day of _____ 2009,)

BEFORE ME:)

Commissioner of Oaths,
being a Solicitor)

PROVINCE OF NEW BRUNSWICK

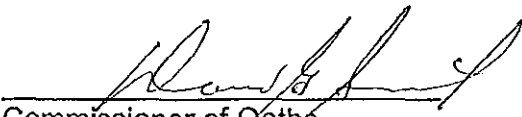
COUNTY OF

I, Robert Tozer, of the City of Miramichi, in the County of Northumberland,
in the Province of New Brunswick, MAKE OATH AND SAY:

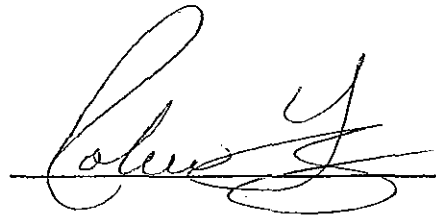
1. That I am the President of **ATCON HOLDINGS INC.** ("the Corporation") and have a personal knowledge of the matters and things herein deposed to and have authority to make this Affidavit on behalf of the Corporation.
2. That the President is the authorized signing officer to execute documents in the name and on behalf of the said Corporation.
3. That the signature "Robert Tozer" affixed to the foregoing document is my signature and is in the proper handwriting of me this deponent as the President of the said Corporation.
4. That the Seal affixed to the said document is the corporate seal of the Corporation, and was so affixed by order of the said Corporation for the purposes of the execution of the said document.
5. This document was so executed by the Corporation as of the 30 day of JUNE, 2009 as and for its act and deed for the uses and purposes therein expressed and contained.

SWORN TO at the City of Miramichi,)
in the County of Northumberland,)
in the Province of New Brunswick)
this 30 day of JUNE, 2009,)

BEFORE ME:)



Commissioner of Oaths,
being a Solicitor)





April 24, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance

Please be advised that your request for financial assistance has been assessed and approval has been given to provide a loan guarantee ("Guarantee") to a Canadian financial institution ("Bank") to secure a loan for Atcon Holdings Inc. (hereinafter referred to as "Company" or "Atcon") in an amount of up to \$10,000,000 (the "Loan"). This offer is in replacement of and not in addition to an offer dated March 27, 2009 relating to a \$10,000,000 loan guarantee and renders that previous offer null and void.

The proceeds of the Loan shall be used to complete capital expenditures at Atcon Industrial Services Inc.'s Miramichi facilities, and for no other purpose.

Term and payment:

The Minister's liability under the Guarantee shall not exceed the lesser of \$10,000,000 or the principal balance of the Loan outstanding on the date upon which the Bank makes demand for payment.

The Loan shall be repaid by way of 72 equal principal payments, commencing on the first day of the 25th month following the issuance of the Guarantee.

Interest on or with respect to the Loan is not guaranteed.

The Guarantee shall be issued to the Bank at such time as the required legal agreements have been executed by all parties, the Minister has received satisfactory legal opinions with respect to the agreements, and the Company has met all of the prior conditions of this offer.

The Guarantee shall terminate eight years following the date upon which it is issued or on such earlier date upon which the Loan is repaid in full, unless on or before such date(s), the Bank has issued a demand for payment under the Guarantee.

Upon receipt of a demand for payment from the Bank, the Minister shall forthwith make payment to the Bank and the Bank shall forthwith assign its security to the Minister.

Security and Documentation:

As security for the Loan to be provided under the Guarantee, the Bank shall hold security by way of a charge over all assets and undertakings of Atcon Industrial Services Inc., together with a guarantee from Atcon Group Inc., and a guarantee from Robert Tozer (which guarantee shall not attach to the guarantor's principal residence).

In addition, the Company shall provide Indemnity Agreements to the Minister, in a form satisfactory to the Minister from the Company and each of the shareholders.

Prior Conditions:

Prior to the issuance of the Guarantee, the Company shall provide the Minister with:

- a) an undertaking that the guaranteed Loan will be used to complete capital expenditures at Atcon Industrial Services Inc.'s Miramichi facilities and for no other purpose;
- b) an agreement by the Company that in the event of any payment being made by the Minister under the Guarantee, the amount so paid shall become an obligation of Atcon Holdings Inc. to be repaid upon demand;
- c) evidence that the Company is in compliance with environmental regulations and that any applicable property tax payments are current;
- d) payment to the Minister of a guarantee charge of 1.5 percent of the amount of the Minister's maximum liability under the Guarantee concurrently with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee;
- e) an undertaking that Atcon shall, within 90 days of the acceptance of this offer, arrange an External Board of Directors or Advisory Board acceptable to the Minister which shall include not less than one member appointed by the Minister, with the frequency of meetings to be held being satisfactory to the Minister;
- f) evidence that Atcon has completed an external review by a firm satisfactory to the Minister of the Company's assets (including receivables, inventories, and "other current assets") indicating results satisfactory to the Minister;

- g) evidence that Atcon has made such administrative changes as are necessary to ensure that any contracts in excess of \$5,000,000 are reviewed by the Advisory Board prior to acceptance, and that the Vice President of Finance recommends acceptance of the contract based on anticipated profit margin and the availability of the working capital required to undertake the contract;
- h) an undertaking to sell or otherwise monetize the highway maintenance contract not later than September 30, 2009, with all proceeds being applied to the Minister's guaranteed loans;
- i) an undertaking to sell or otherwise monetize the Swedish assets as quickly as possible, but in no event later than July 31, 2010, with all proceeds being applied to the Minister's guaranteed loans. The Minister is to be provided with monthly progress reports from the firm which has been engaged to sell the assets, and the company shall undertake not to reject any offer of \$18 million or more;
- j) an agreement from Atcon Group to acknowledge that, while Atcon Construction Inc. may bid on PNB contracts during the duration of the guarantee(s), those bids will be disqualified if there is a bid from another NB company. Additionally, Atcon Construction Inc. shall agree not to seek or accept sub-contracts on projects funded by PNB, save and excepting the supply of aggregate and asphalt in volumes not to exceed the volumes sold during the company's previous fiscal year; and
- k) a resolution plan acceptable to the Minister with respect to all outstanding payables owed to New Brunswick companies and the Province of New Brunswick.

Restrictions:

As long as the Guarantee is outstanding, the Company shall not, without the prior written approval of the Minister or the Minister's representative:

- a) make or incur commitments for capital expenditures in excess of \$1,000,000 in any fiscal year whether by purchase or lease;
- b) declare or pay dividends on its capital stock, redeem any preferred or common shares, pay any management fees or bonuses, repay any shareholders' loans or pay interest on same, make any inter company loans or repayment of same except in the normal course of business, nor make loans to, investments in or guarantees on behalf of others;
- c) permit any transactions between the Company and affiliates of the Company unless such transactions are at fair market value and the Minister or a representative of the Minister is accorded the opportunity to review the financial records of the companies involved upon request;

- d) sell or encumber assets in excess of \$500,000 annually except in the ordinary course of business;
- e) allow a change in ownership of the controlling shares of the Company; nor
- f) engage the services of any consultant or consulting firm not at arm's length with the Company.

Compliance:

As long as any amount of the Guarantee is outstanding, the Company shall comply with all of the terms and conditions of the assistance and in addition shall provide the information requested and otherwise comply with the requirements contained in Schedule "A" to this letter.

Other Requirements:

As long as the Guarantee is outstanding, the Company agrees, unless otherwise approved by the Minister or the Minister's representative, to:

- a) be permitted to repay the guaranteed Loan in whole or in part at any time without penalty from the Minister;
- b) maintain fire insurance in an amount no less than 80 percent of replacement value or 80 percent of the cash value of the Company's assets as reasonably determined by the Company, or an amount satisfactory to the Minister or the Minister's representative;
- c) allow a nominee of the Minister to attend any and all meetings of the Company's Board of Directors or Advisory Board should the Minister so request, such nominee to act in an advisory capacity only, without voting privileges, but entitled to all notices of meetings of the Board;
- d) pay and satisfy all taxes, rates, and public charges, due or falling due with respect to the Company and operate the business in a good and businesslike manner;
- e) pay within 30 days of receipt of an invoice from the Minister all costs, charges and expenses incurred by the Minister in association with preparation, execution, filing of documents, protection of security, searching of titles, together with interest thereon for past due amounts at the rate of 10.69 percent per annum until so repaid;
- f) where possible in terms of cost, quality and availability, review and consider the use of New Brunswick goods and services in relation to this project;
- g) make all reasonable efforts to ensure that employees of the Company are provided the opportunity to upgrade skills through training or education;

- h) meet all federal and provincial environmental regulations;
- i) adhere to generally accepted accounting principles (GAAP) in any financial reporting to the Minister; and
- j) pay an annual charge of 1.5 percent of the Minister's maximum liability under the Guarantee concurrent with the issuance of the Guarantee and annually thereafter on the anniversary dates of the issuance of the Guarantee.

Issuance of the Guarantee:

The Guarantee offered herein shall not be issued until all terms and conditions identified herein, together with such other terms and conditions as may be specified by the Minister, have been embodied in formal agreements and security documents satisfactory to the Minister.

Required Information:

Mr. John Watt of the Business Financial Support Division of the Department of Business New Brunswick will be responsible for the formal documentation and in order that we may proceed with this documentation, the following items should be submitted to the Department:

- a) a certified copy of the Articles of Incorporation and Articles of Amendment of the Company and any corporate shareholder;
- b) a certified copy of the Company's Borrowing By-Law and the by-law respecting signing officers;
- c) a Certificate of Incumbency of the officers of the Corporation indicating those who will be signing the documents;
- d) the name and address of the Company's solicitor;
- e) a list of all existing shareholders and their number of shares;
- f) a list of all existing shareholder loans; and
- g) a statement of any outstanding or pending legal actions against the Company or any of its shareholders, and the current status of any such actions.

If, in the opinion of the Minister, the Company's situation changes in a materially adverse manner or the Company is unable to fulfill the Prior Conditions of this offer within 90 days of the date of acceptance of this offer, the offer may be withdrawn.

Would you please sign and return the attached copy of this letter where indicated below to signify your agreement with the terms and conditions herein. Please note that, if the offer is not accepted within 30 days of the date of this letter, it will expire and any form of conditional acceptance will render this offer null and void.

Yours truly,



Greg Byrne, Q.C.
Minister

cc: John Watt

Hereby accepted this 29 day of April, 2009


Atcon Holdings Inc.

Schedule A**Atcon Holdings Inc.****Account Monitoring Plan**

- Submit to the Minister annually, budgets and cash flow projections no later than the end of the prior fiscal year.
- Provide the Minister with the audited annual financial statements of the Company within 120 days of the close of its financial year, and such other statements as the Minister may from time to time require.
- Provide the Minister with a copy of the auditor's management letter and the response to that letter.
- Provide the Minister with the Company's quarterly financial statements with comparison to budget, including profit and loss statements and balance sheets, all in formats satisfactory to the Minister, 30 days after each quarter end.
- Provide the Minister with reports on orders booked, sales levels and employment levels, should the Minister so request.
- Allow a representative of the Minister access to all the facilities of the Company and the books and records of the Company.



June 9, 2009

Atcon Holdings Inc.
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Attention: Mr. Robert Tozer, President

Dear Mr. Tozer:

Subject: Minister of Business New Brunswick ("Minister") - Financial Assistance

I refer herein to three letters of offer dated April 24, 2009 regarding loan guarantees in the amounts of \$10,000,000, \$20,000,000 and \$20,000,000.

The Prior Conditions contained in those letters are hereby amended as follows:

1) by deleting clause j) and replacing it with a revised clause j) to read:

"An agreement from Atcon Group Inc. that Atcon companies engaged in the construction sector (as hereinafter defined) may bid on PNB funded contracts excluding P3 projects while the financial assistance by way of loan guarantee(s) is in effect but that upon notification by PNB of a competitive bid from another New Brunswick company, the Atcon company shall withdraw its bid and remove itself from consideration for participation or other involvement in the project in question. This restriction and undertaking shall apply to contracts in which the Atcon company is a prime contractor or sub contractor but does not apply to contracts for the supply of aggregate and asphalt so long as the quantities and volumes do not exceed the quantities and volumes sold during that company's 2009 fiscal year.

Atcon Group Inc. further acknowledges that while Brunway Group or other joint venture involving Atcon companies may bid on P3 projects in New Brunswick, Atcon companies shall not perform construction sector work under the P3 project contract(s) without the express written consent of the Minister or the Minister's representative.

"Atcon companies" includes any company, limited partnership, partnership or trust in which Atcon Group Inc., Atcon Holdings Inc. or Robert Tozer holds an equity position, has a contractual right to obtain an equity position or holds any beneficial right or interest whatsoever. "Construction sector" includes, but is not limited to, highway construction and paving."

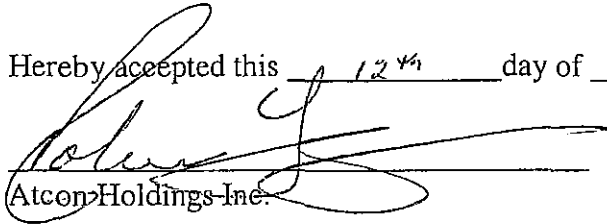
Would you please sign and return the attached copy of this letter where indicated below to signify your agreement with the terms and conditions herein. Please note that, if the offer is not accepted within 30 days of the date of this letter, it will expire and any form of conditional acceptance will render this offer null and void.

Yours truly,



Jack Keir
Acting Minister

Hereby accepted this 12th day of JUNE, 2009


Atcon Holdings Inc.

July 17, 2009

The Bank of Nova Scotia
1709 Hollis Street, 4th floor
Halifax, NS B3J 2M1

Attention: Patricia Davis, Senior Manager

Dear Ms. Davis:

RE: Atcon Holding Inc.


This letter is to confirm to you that the Minister of Business New Brunswick has agreed to permit Atcon Holdings Inc. to draw an additional \$2,000,000 under Capital Expenditure Guarantee.


As you aware, the Minister is not in the office today. I am hereby providing to you my undertaking that the authorization letter as attached will be signed by the Minister and delivered to you on or before July 23, 2009.

I trust that this is satisfactory to you.

Yours truly,

Pil Lepage
Acting Deputy Minister

Exhibit #63
December 7, 2010

Blackwell Court Reporting

63




July 17, 2009

The Bank of Nova Scotia
1709 Hollis Street, 4th floor
Halifax, NS B3J 2M1

Attention: Patricia Davis, Senior Manager

Dear Ms. Davis:

RE: Atcon Holding Inc.

I refer herein to a Guarantee Agreement made as of the 30th day of June, 2009 between Atcon Holdings Inc., The Bank of Nova Scotia, and Her Majesty the Queen in Right of the Province of New Brunswick as represented by the Minister of Business New Brunswick (the "Capital Expenditure Guarantee").


Pursuant to Clause 1.(a) of the aforementioned agreement, I hereby authorize the Bank of Nova Scotia to advance up to \$8,000,000 of the guaranteed loan.

Yours truly,

Victor Boudreau
Minister

Exhibit #64

December 7, 2010


Blackwell Court Reporting

64

Minister/Ministre

Business New Brunswick/Entreprises Nouveau-Brunswick

P.O. Box/C.P. 6000 Fredericton New Brunswick/Nouveau-Brunswick E3B 5H1 Canada Tel./Tél. (506) 453-5898 Fax/Téléc. (506) 453-5893

www.gnb.ca



MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Friday, July 17, 2009 8:31 AM
To: Perron, Sadie (BNB/ENB)
Subject: FW:

The games begin!

I propose to advise Katrina that we are not prepared to consider an additional advance on the Capital Expenditure loan to be used for working capital.

Let me know if you think otherwise.

John

From: Katrina Donovan [<mailto:kdonovan@atcongroup.com>]
Sent: Thursday, July 16, 2009 5:19 PM
To: Watt, John (BNB/ENB)
Subject:


We need some help. Our current work can only support a line of credit of \$28m. As part of the refinancing we had to pay a large portion of the working capital injection back to the bank to reduce our LOC. Two factors are contributing to our cash problems – certain receivables are falling off the borrowing base that have not been collected. We do expect to collect these receivables in the near future however currently we cannot margin them. The other factor is the volume of work. We have mobilized to Newfoundland but the progress billings have not ramped up yet.

Is there any way we can draw a portion of the remaining loan for a short term basis to assist in working capital. BNB has everything we have and we need to get through the next few weeks. Our focus has been on the refinancing until last week and then efforts quickly moved to cash collections.

I am travelling tomorrow but am available on my cell phone – please call me at 627-9975.

Thanks,
Katrina

Katrina Donovan, CA, CBV
VP Finance and Administration - CFO
Atcon Group
626 Newcaslte Blvd., Miramichi, New Brunswick
Ph: 506-627-1222 Fx: 506-627-1676
Email: kdonovan@atcongroup.com

 Think of the environment before printing out this message

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Ex 64A
PB
Dec 21/10

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Friday, July 17, 2009 9:57 AM
To: Perron, Sadie (BNB/ENB)
Subject: RE: loan guarantee atcon july 16

The draft letter looks ok to me.

Since it addressed to The Brun-Way Group, I would suggest that we simply cc Atcon and Robbie Tozer rather than send two letters.

That will force Atcon and SNC to resolve the matter.

From: Perron, Sadie (BNB/ENB)
Sent: Thursday, July 16, 2009 5:44 PM
To: Watt, John (BNB/ENB)
Subject: FW: loan guarantee atcon july 16
Importance: High

fyi

*Sadie Perron
Assistant Deputy Minister / Sous-ministre adjointe
Business New Brunswick
Entreprises Nouveau-Brunswick
453-7499*

From: Grant-McGivney, Margaret (DOT/MDT)
Sent: 16 juillet 2009 17:44
To: Logan, John (OAG/CPG)
Cc: Perron, Sadie (BNB/ENB); Burns, Richard P. (TCH/JUS)
Subject: loan guarantee atcon july 16
Importance: High

John,

Further to our meeting this morning, please find a preliminary first draft of a letter to The Brun-Way Group.

We look forward to your comment. If you want to discuss this matter further please call Richard Burns at 444-4931.

Regards,

Margaret Grant - McGivney

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Monday, July 20, 2009 9:09 AM
To: 'Katrina Donovan'
Subject: cash flow

I need to come up and talk to you so that I understand what happened and what is up-coming.

Are you available around 11:30 today?

John

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Tuesday, July 21, 2009 8:38 AM
To: Perron, Sadie (BNB/ENB)
Subject: RE: Climate Action Fund Award - Atcon file

Bob Kiely's e-mail of July 8th suggests that the CAF award is to go to a non-Atcon company, so Atcon should not be requesting an advance.

I am going to Miramichi tomorrow. I will try to find out what this is all about.

John

From: Perron, Sadie (BNB/ENB)
Sent: Tuesday, July 21, 2009 8:25 AM
To: LePage, Phil (BNB/ENB); Watt, John (BNB/ENB)
Subject: Climate Action Fund Award - Atcon file

I spoke to Perry Haines and he will send me the information on the program and ATcon's application. ATCON has requested a \$500,000 advance under the program prior to commencement of the project.

*Sadie Perron
Assistant Deputy Minister / Sous-ministre adjointe
Business New Brunswick
Entreprises Nouveau-Brunswick
453-7499*

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Tuesday, July 21, 2009 8:44 AM
To: 'Katrina Donovan'
Subject: RE: cash flow

Wednesday is fine. About 10:00?

I need to discuss your cash flow situation in order to explain why we had to allow an advance on the Capital loan.

I also need to discuss the financial implications of Envirem's Belledune project at the former Bennett facility.

Have you been in touch with Richter yet?

Let me know if 10:00 tomorrow works for you.

John

From: Katrina Donovan [<mailto:kdonovan@atcongroup.com>]
Sent: Monday, July 20, 2009 5:43 PM
To: Watt, John (BNB/ENB)
Subject: RE: cash flow

When do you want to come – is Wednesday OK with you? What do you want to look at?

From: Watt, John (BNB/ENB) [<mailto:John.Watt@gnb.ca>]
Sent: Monday, July 20, 2009 9:09 AM
To: Katrina Donovan
Subject: cash flow

I need to come up and talk to you so that I understand what happened and what is up-coming.

Are you available around 11:30 today?

John

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Tuesday, July 21, 2009 9:41 AM
To: 'Katrina Donovan'
Subject: Richter
Attachments: Richter mandate.doc

I did not send Richter the mandate items.

I have attached the list if you want to send it.

Review of the following for Atcon Holdings Inc. and its subsidiary companies:

Past 3 years operating results (for purposes of familiarization and to understand recent trends) ;

The most current financial position and operating results;

The most current business plan and financial forecast;

The long term strategies;

The overall overhead structure (including general & administration, HR, etc);

The organizational structure, including assessment of senior management;

The corporate structure;

The overall reporting systems and technology;

The current and long term capital expenditure requirements;

Potential underperforming and/or redundant assets;

Compensation and incentive programs;

Contract management and bidding processes;

The cash management;

Development structure of governance.

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Tuesday, July 21, 2009 11:31 AM
To: 'Ciaran Dooley'
Cc: 'patricia.davis@scotiabank.com'
Subject: letter

The letter authorizing the additional advance on the capital loan has been signed by the Minister and is being sent by courier today.

John

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Thursday, July 23, 2009 8:54 AM
To: LePage, Phil (BNB/ENB)
Cc: Perron, Sadie (BNB/ENB)
Subject: Atcon

I visited Atcon on July 22nd to discuss a number of items:

My discussions were with Katrina Donovan, Atcon's VP Finance.

Route #1

Upon receipt of DOT's letter, SNC-Lavalin called Robbie Tozer to a meeting in Montreal on Monday, July 21st. At the meeting, SNC tabled the letter (which Robbie was unaware of), and is severing its relationship with Atcon, both in the Brun-way Group J/V and in the existing Brunway partnership and in the ongoing highway maintenance contract. Atcon will not be doing any work on route #1. Atcon was given until late yesterday to provide a letter to SNC acknowledging that the relationship is ended. I do not know if the letter was sent, but Katrina said that she would copy us on it.

Belledune Envirem Project

This project, which was seeking both AIF and CAF funding will not be proceeding under Atcon's ownership, as it would require capital expenditures beyond the limits imposed by both BNB and the Bank of Nova Scotia. Atcon has received an inquiry from a party interested in purchasing all or a portion of Envirem, which Atcon is looking at seriously. This would generate cash for Atcon, and the Belledune project could proceed under the new ownership. If it is sold, Atcon will be requesting that 50% of the proceeds be used for working capital and 50% for debt reduction.

Michelin Contract

Atcon has been awarded the contract to supply tire moulds to Michelin. This is a multi-year, multi-million dollar contract. The problem is that it will require up to \$6 million in capital expenditures, which is out of the question at this time. Atcon is currently working on ways to reduce these costs, in large part by utilizing existing buildings and equipment and subcontracting a portion of the work. The company is looking at possibly selling \$3-\$4 million of underutilized assets in order to be able to take on the Michelin contract. It would need to borrow to purchase the necessary equipment, but the net effect on the company's debt would be neutral, and BNB and BNS would probably agree to this approach.

Richter consulting study

Richter has confirmed to me that they had a very productive 45 minute conference call with Atcon. The company is going to be sending a substantial amount of information to Richter prior to a preliminary meeting in early August. Katrina in particular is very anxious to get this study done, as she thinks it will be of great help to Atcon.

Advisory Board

The advisory board is not yet in place, and will not be in place by the July 29th deadline. I do not believe that this is a deliberate attempt to evade the issue, I think it is more a case of not being sure how to get a board in place and operational. The Richter report, once completed, will be of great help to a new board. I really have no concern about a 30-60 day delay in the establishment of the board.

Cash Flow

Cash flow remains a very serious problem. The Bank is not allowing any flexibility on the operating line. Ernst & Young, selected by BNS to study Atcon, are currently working on the project with a BNS imposed deadline of July 31st to complete the report. Katrina advises that they are concentrating almost exclusively on the evaluation of current assets which comprise the BNS security. Katrina is concerned that, upon receipt of the report, BNS may change the existing margin formula and further reduce the company's borrowing ability.

Beyond those issues, the company has well over \$12 million in accounts receivable which are over 90 days old and are no longer considered in the BNS margin calculation. The receivables are from large companies (Shell, Suncor, etc.), and will be collected, but timing is becoming critical. The company is making every effort to collect. The volume of work is decreasing, which is placing further stress on the company as the fixed costs remain in place.

The company is looking at a number of possible options to reduce debt and operating costs.

These include the possibility of closing the machining division. This division is still losing money, and should have been closed years ago. The closure, if it occurs, would affect up to 80 people.

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Thursday, July 23, 2009 10:27 AM
To: 'ERodier@rsmrichter.com'
Subject: RE: Atcon
Attachments: image001.jpg

I am available all day, so whatever works for you is fine.

From: ERodier@rsmrichter.com [mailto:ERodier@rsmrichter.com]
Sent: Thursday, July 23, 2009 10:14 AM
To: Watt, John (BNB/ENB)
Subject: RE: Atcon

John,

What time would you like to meet? Are you available for lunch?

Regards,

Eric

Eric A. Rodier, MBA, CA
RSM Richter Inc.

2, Place Alexis Nihon, Montréal (Québec) H3Z 3C2
erodier@rsmrichter.com • www.rsmrichter.com
T : 514 934 3452 • **Fax :** 514 934 3504

From: Watt, John (BNB/ENB) [mailto:John.Watt@gnb.ca]
Sent: July 23, 2009 8:31 AM
To: Rodier, Eric
Subject: Atcon

Would you be available to meet me in your offices on Friday, July 31?

John



Devez-vous vraiment imprimer ce courriel? Pensez vert!
Do you really need to print this email? Think green!

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RSM Richter S.E.N.C.R.L.

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RSM Richter LLP

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Thursday, July 23, 2009 10:31 AM
To: 'Katrina Donovan'
Subject: Richter

Can you send me Atcon's consent for me to discuss the company's affairs with Richter? I am meeting with them next week in Montreal.

ps: Did a letter go to SNC?

John

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Friday, July 24, 2009 9:38 AM
To: LePage, Phil (BNB/ENB)
Subject: FW: Richter

FYI

Katrina says she does not have a copy of SNC's letter to DOT. I tried calling Margaret Grant-McGivney, but she is in meetings.

From: Katrina Donovan [<mailto:kdonovan@atcongroup.com>]
Sent: Friday, July 24, 2009 9:23 AM
To: Watt, John (BNB/ENB)
Cc: ssilliker@atcongroup.com
Subject: RE: Richter

Shannon has letter of consent and she will scan and send to you today. I do not have copy of letter to DOT but it has been sent

From: Watt, John (BNB/ENB) [<mailto:John.Watt@gnb.ca>]
Sent: Friday, July 24, 2009 9:03 AM
To: kdonovan@atcongroup.com
Subject: FW: Richter

Just a reminder. I know you are busy.

John

From: Katrina Donovan [<mailto:kdonovan@atcongroup.com>]
Sent: Thursday, July 23, 2009 10:54 AM
To: Watt, John (BNB/ENB)
Subject: RE: Richter

SNC was sending letter to DOT – I will try to get a copy. I will send you consent today

From: Watt, John (BNB/ENB) [<mailto:John.Watt@gnb.ca>]
Sent: Thursday, July 23, 2009 10:31 AM
To: Katrina Donovan
Subject: Richter

Can you send me Atcon's consent for me to discuss the company's affairs with Richter? I am meeting with them next week in Montreal.

ps: Did a letter go to SNC?

John

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Friday, July 24, 2009 10:41 AM
To: 'Shannon Silliker'
Subject: RE: 07-24-2009(3).pdf

The letter attachment gives consent for Richter to discuss Atcon with BNB. I needed consent for BNB to discuss Atcon with Richter.

John

From: Shannon Silliker [<mailto:ssilliker@atcongroup.com>]
Sent: Friday, July 24, 2009 9:52 AM
To: Watt, John (BNB/ENB)
Cc: kdonovan@atcongroup.com
Subject: 07-24-2009(3).pdf

Good Morning,

Please see the attached.

Thanks,
Shannon

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Friday, July 24, 2009 11:50 AM
To: 'kdonovan@atcongroup.com'
Subject: RE: Certificates for Province of New Brunswick

Got them

Thanks

From: Katrina Donovan [<mailto:kdonovan@atcongroup.com>]
Sent: Friday, July 24, 2009 11:36 AM
To: Watt, John (BNB/ENB)
Subject: FW: Certificates for Province of New Brunswick

If you require more information please let me know – please confirm receipt

From: Sullivan, Sonya M [<mailto:Sonya.M.Sullivan@marsh.com>]
Sent: Friday, July 24, 2009 10:28 AM
To: Katrina Donovan
Cc: Shannon Silliker; 'Vicky Malone'; GendronCurtis, Dominique
Subject: Certificates for Province of New Brunswick

Here you go.

4300 17129

Atcon Holdings Inc.
Report to The Bank of Nova Scotia
4 August 2009

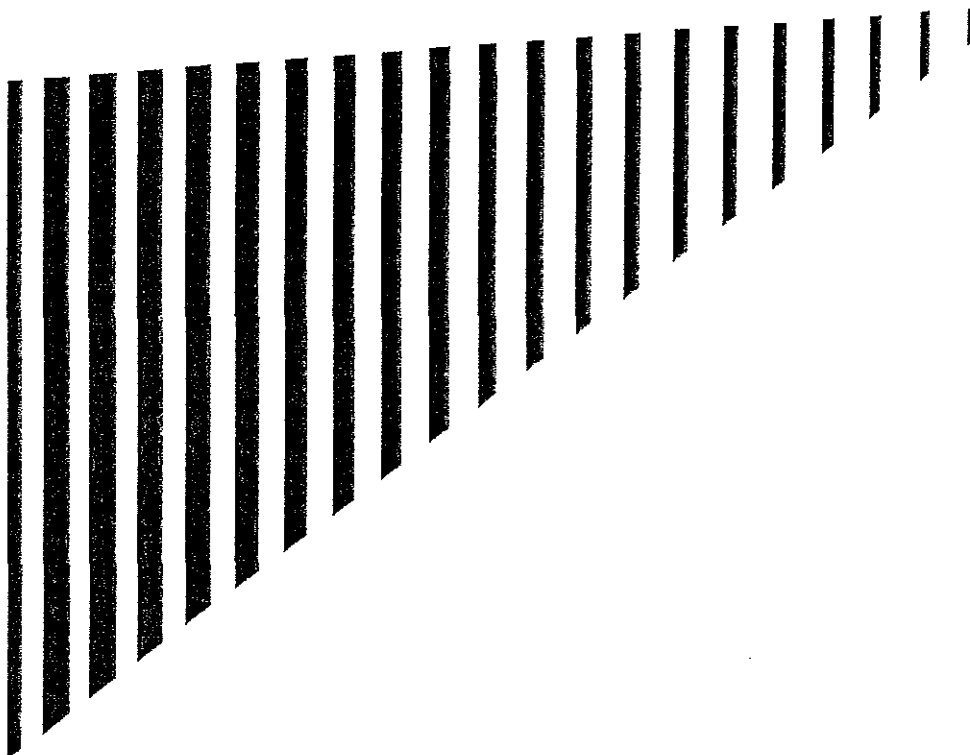




Exhibit #71
December 8, 2010

Blackwell Court Reporting

71


Bank of Nova Scotia
PO Box 70
1709 Hollis Street, 4th Floor
Halifax NS B3J 2M1

4 August 2009

Attention: Mr. Craig Thompson, Area Vice President
Atlantic Region, Commercial Banking

Re: Atcon Holdings Inc.

Dear Mr. Thompson,

Introduction

The Bank of Nova Scotia (the "Bank") retained Ernst & Young Inc. ("EY") as its consultant by letter of engagement dated 15 July 2009 to review the financial affairs of Atcon Holdings Inc. ("Atcon" or the "Company"). We are in the process of conducting that review and will report to the Bank thereon in due course. We are now writing, in accordance with your request, to provide an interim report solely on Atcon's reported borrowing base as at 6 June 2009 (the "June Borrowing Base"). We have organized our comments as follows:

- ▶ Executive Summary
- ▶ The June Borrowing Base
 - ▶ Eligible Receivables
 - ▶ Eligible Inventory
 - ▶ Priority Payables
- ▶ Summary

In conducting our review and developing this report, we have relied upon unaudited internal financial statements, the Company's financial records, including those of its subsidiary companies included in the June Borrowing Base, i.e., Atcon Construction Inc. ("Construction"), Atcon Industrial Services Inc. - Fabrication Division ("Fabrication"), Atcon Industrial Services Inc. - Machining Division ("Machining"), Atcon Plywood Inc. ("Plywood"), Atcon Veneer Products Inc. ("Veneer"), Envirem Technologies Inc. ("Envirem"), Atcon's internal financial projections and written and verbal representations from management. We have not performed an audit or other verification of such information and accordingly, we express no opinion thereon.

This report has been prepared for the use only of those to whom it is addressed and consequently it should not be circulated to others or used for other purposes or reproduced without our knowledge and prior written permission. We will not assume responsibility or liability for losses incurred by the reader or any other party as a result of the circulation, publication, reproduction, or use of our report contrary to the provisions of this paragraph. We reserve the right but will be under no obligation to update this report or otherwise notify any party, for events occurring, or information coming to our attention, subsequent to the date of this report.

Executive Summary

As at 6 June 2009, Atcon had a \$40.0 million operating credit, a borrowing base of \$26.2 million, a total operating credit use of \$39.4 million and a borrowing base deficiency of \$13.2 million. A copy of the June Borrowing Base is attached as Appendix 1. Errors, and potentially non-compliant items which may affect the accuracy of this borrowing base, are shown at Exhibit A. We have discussed these matters with Mr. Robert Tozer, President, Mr. Mark Ledwell, Vice President and Legal Counsel and Ms. Katrina Donovan, Vice President Finance and CFO (collectively hereinafter referred to as "Management"). A brief summary follows:

- ▶ **Errors** - In the course of our review we have identified errors such as duplicate accounts receivable accruals, duplicate inventory postings, under-reported HST, employee source deductions, and wage accruals, etc. (see Exhibit A). We have reviewed these errors with Management who concur with EYI's assessment. The correction of these errors has the cumulative effect of reducing the June Borrowing Base from \$26.2 million to \$23.5 million, a reduction of approximately \$2.8 million or 10%. ∴ 16M over b. base
- ▶ **Potentially Non-Compliant Items** - EYI has identified certain items listed in Exhibit A which potentially should not have been included in the June Borrowing Base because their inclusion may not be compliant with the strict terms of Atcon's credit agreement with the Bank. Management believes these items are compliant and consistent with their historical borrowing base reporting practices. A brief description of larger items follows:
 1. \$10.7 million of accounts receivables - at issue with these accounts receivable is the interpretation of the definition of the 90 day eligibility period for borrowing base inclusion. The inclusion of these items had the effect of increasing the June Borrowing Base by \$8.0 million.
 2. \$3.2 million of accounts receivable accruals - at issue with these items is the determination of when project WIP is properly converted into a *bona fide* account receivable and therefore eligible for inclusion in the borrowing base calculation. The inclusion of these items had the effect of increasing the June Borrowing Base by \$2.4 million. , f. include
∴ 26.4M over B. base
 3. \$8.2 million of action, suits or proceedings - at issue with these items is that they may have priority over the Bank's security, they were not reported in the June Borrowing Base and they may or may not have a direct correlation to Eligible Receivables included in the June Borrowing Base (e.g., the item may relate to a > 90 day or a disqualified account).

Although we have not concluded it is appropriate to deduct these items from the June Borrowing Base, we have included them at Exhibit A for the Bank's consideration.

Our detailed comments on the components of the June Borrowing Base are provided below.

The June Borrowing Base

June Borrowing Base - \$26.2 million

A copy of the actual 6 June 2009 borrowing base calculation submitted by Atcon is attached as Appendix 1. This submission indicates the authorized signature of "Katrina Donovan - VP Finance and Administration" was provided by email in accordance with the Company's credit agreement with the Bank. The key components of the June Borrowing Base as submitted are as follows:

<i>Established Operating Credit</i>	<i>\$40.0 million</i>
Eligible Receivables	\$23.6 million
Eligible Inventory	5.3 million
Sub-total	28.9 million
Specific Payables	(2.7) million
Borrowing Base	26.2 million
Total Operating Credit Usage	39.4 million
Borrowing Base Deficiency	(13.2 million)

Our comments on each of the key components are provided below.

Eligible Receivables - \$23.6 million

The Construction aged accounts receivable report used to calculate the Eligible Receivables for the June Borrowing Base was aged as at the calendar month-end date of 31 May 2009 rather than the period-end and borrowing base date of 6 June 2009 whereas the aged accounts receivable reports of the other five divisions included in the June Borrowing Base were aged as at 6 June 2009. This created a stub-period (the "Stub-Period") of six days and an eligibility period of 96 rather than 90 days. Management has advised it is the Company's standard practice to run Construction's accounts receivable aging report as at the "month-end" date versus the "period-end" date because Construction's billings are generally prepared on a calendar month basis. For example, the 4 April 2009 borrowing base was prepared using a 31 March 2009 trial balance and the 7 March 2009 borrowing base with a 27 February 2009 trial balance.

The existence of the "Stub-Period" has the following borrowing base implications:

1. The Company was able to include an additional \$10.7 million of Construction's accounts receivable invoices (the "A/R Invoices") in the June Borrowing Base representing an additional \$8.0 million of borrowing base eligibility. The potential impact on the June Borrowing Base of removing this \$10.7 million is shown in Exhibit A.
2. The borrowing base could be overstated in any month if payments on account of any A/R Invoices included in a month-end Construction aged trial balance are received during the Stub-Period and the borrowing base calculation is not manually adjusted for such payments.

We have commented below on the two major components of the Company's accounts receivable:

1. The A/R Invoices posted to and included in the month-end accounts receivable sub-ledgers Management uses to prepare the borrowing base; and
2. The accounts receivable accruals made by Construction after the sub-ledgers have been closed for the period (the "A/R Accruals").

Accounts Receivable

Attached as Exhibit B is a reconciliation of the aged divisional accounts receivable sub-ledgers to the \$23.6 million of Eligible Receivables in the June Borrowing Base. Virtually all of this balance (i.e., 96% after accruals and adjustments) is from Construction's significant contracts with the customers listed in the account receivable summary below. The Company is having significant problems with the collectability of these accounts with 57% of the total being ineligible for borrowing base purposes because they are either older than 90 days (48%) or specifically disqualified by the Bank due to historical collection problems (e.g., Cdn Natural Resources Ltd. - 7%).

Atcon Group Atcon Construction - Aging by Major Customer As at June 6, 2009

Customer	Current	1-30	31-60	61-90	91-999	GROSS AR
Suncor Energy Services	-	-	-	7,017,647	7,673,892	14,691,539
Pennecon	-	20,331	-	525,000	6,238,813	6,784,144
Deh Cho Bridge Corp.	-	-	-	1,446,936	3,306,330	4,753,265
SkyPower	299,874	602,028	-	2,435,428	10,509	3,347,839
Cdn Natural Resource Ltd	-	1,275,537	572,262	305,365	25,855	2,179,019
AIT - CNRL	-	-	-	-	951,431	951,431
AMEC - Coll JV	-	20,518	-	744,056	-	764,575
Dept. of Transport. NB	4,209	153,036	-	521,892	29,393	708,529
NWT Transportation	485,988	-	-	-	-	485,988
Non Job Entries	292,381	(584,872)	34,678	67,335	(3,312,679)	(3,503,157)
Other Jobs	203,926	47,731	36,750	-	288,778	577,185
	1,286,378	1,534,309	643,691	13,063,660	15,212,321	31,740,358

A brief summary of the status of each of these accounts follows:

- Suncor - \$14.7 million - Management advises an agreement was reached in June 2009 whereby Suncor released \$5.8 million of the account receivable to three project subcontractors in payment of liens they had filed against the project. These liens are discussed more fully below. Suncor made the payments directly to the subcontractors and no cash came to Atcon. As at the date of this report, the Company's records show a net balance owing from Suncor in the amount of \$10.9 million including a \$2.0 million A/R Accrual discussed below.

Meetings originally scheduled for the week ending 31 July 2009 between Suncor officials and Management to resolve the unpaid contract amounts were postponed. Management advises Suncor requested additional time to review the materials it presented and to obtain Board approval for a sizeable settlement offer to Atcon. Management are cautiously optimistic that the requested delay will result in a favourable settlement offer being made in early August. Management hopes to settle the account for \$10 million.

- ▶ Pennecon Heavy Civil - \$6.8 million - This account balance should actually be \$3.1 million because the Company had not properly recorded its agreement with Pennecon to offset this account receivable against a \$3.7 million payable to Pennecon on a Manitoba contract. This offset payment should have been recorded in a manner that gave the same result as if \$3.7 million of cash had exchanged hands. Instead, a credit was posted to an account receivable sub-ledger account titled "Non Job Entries" which is shown the above table.

While this Pennecon offset has no effect on the overall accounts receivable total or aging, the practice of using such offsets raises the following concerns because they:

- Reduce the borrowing base by reducing Eligible Receivables or reduce the security underlying Bank advances by reducing accounts receivables which are not eligible for inclusion in the borrowing base;
 - Effectively enable the Company to make significant payments to suppliers at times it has no availability on the Operating Facility; and
 - Could have a material negative impact on any decisions made by the Bank in reliance on the amounts shown as specific customer accounts receivables in the Company's account receivable sub-ledger.
-
- ▶ Deh Cho Bridge - \$4.8 million - The Deh Cho Bridge Commission contract is a \$136 million fixed price contract that is approximately one third complete. Deh Cho has decided that it wants to re-design the superstructure component of the bridge and is revising engineering drawings that are expected to be released to the Company in late August or September at which time Atcon will have to enter into re-pricing negotiations with Deh Cho. This customer had traditionally paid its account in a reasonable time frame but the Company has had significant problems with some of its sub-subcontractors on this project and Deh Cho had to get involved to help resolve them. Management expects this account to be paid in August 2009. In addition to 70% of this account being > 90 days, we have identified the following error in the June Borrowing Base related to this account:
 - The Deh Cho account receivable was overstated by \$1.0 million because the April billing was processed in the accounts receivable sub-ledger and in the A/R Accruals. Management advises this error arose because it did not have enough time to properly reconcile all accounts before the June Borrowing Base was issued due to the time it had to spend on the refinancing transaction. EYI has included a correcting adjustment for 75% of this amount (i.e., the margin %) in Exhibit A.

Jan 2010

- ▶ Canadian Natural Resources Limited ("CNRL") - \$2.2 million - The Bank has specifically disqualified this account from being included in the Company's borrowing base because of the Company's historical collection problems with CNRL.
- ▶ AIT-CNRL - \$1.0 million - As shown in Exhibit B, Management adjusted Construction's accounts receivable aging because it had inadvertently applied a customer credit to the marginable current category instead of the non-marginable > 90 day category. Consequently, the total balance showing as due from the customer is correct but the aging is incorrect. Accordingly, the adjustment as presented by Management appears to be correct. Although this customer account name includes "CNRL", it is not subject to the CNRL disqualification referred to above.

Accounts Receivable Accruals

Management has advised the Company does not have enough time to prepare and post all of Construction's billings to its accounts receivable sub-ledger each period because the sub-ledger is closed two days after the period-end date. Consequently, the Company must instead prepare A/R Accruals and in fact prepared and posted \$9.9 million of them in the period ended 6 June 2009 which therefore were included in the June Borrowing Base. A list of these A/R Accruals is attached as Exhibit D.

We were also advised the current process for generating an A/R Invoice from an A/R Accrual, subject to oversights or special reporting circumstances, is to do so when the billing is approved by the customer. Then, to properly track the 90 day inclusion period for borrowing base purposes, the A/R Invoice, once produced, is dated the last day of the borrowing base period in which the Company obtained borrowing credit for it.

We have commented briefly below on the three largest A/R Accruals included in Exhibit D:

- ▶ Suncor - \$2.0 million - The procedure for generating an Eligible Receivable for borrowing base purposes from ineligible > 90 day WIP is not specifically defined. Management advises this A/R Accrual is for previously un-billed 2007/2008 fuel charges which have been carried in WIP since that time but which were verbally agreed to by Suncor in May 2009. The invoice for this accrual is dated 5 June 2009 and only references "progress billing".

As noted above, Management views the critical event to generate an invoice to be receipt of client acceptance of the proposed billing notwithstanding the underlying project or specific charges may have been completed several months or years prior. Further, Management states its ability to generate a *bona fide* account receivable only arose at the time Suncor provided positive confirmation that this billing would be accepted. As such, Management believes it has appropriately reported this invoice in the proper period and that it qualifies for inclusion in the June Borrowing Base.

Although we have not concluded it is appropriate to exclude this item from the June Borrowing Base, we have shown it as a potentially non-compliant item in Exhibit A.

- Deh Cho - \$4.8 million - This progress billing was emailed to Deh Cho on 11 June 2009 but the A/R Invoice for it had not been formally invoiced as at 23 July 2009. This A/R Accrual is in addition to the \$4.8 million of A/R Invoices discussed in the Accounts Receivable section above of which 69% or \$3.3 million is > 90 days old.

Management indicated Deh Cho's Independent Engineer responsible for verifying and approving Construction's billings had been terminated and a replacement engineer had only recently been put in place. The Independent Engineer sign-off on a progress billing is the trigger event for Deh Cho to release funds and for the Company to formally issue an A/R Invoice. Management initially advised us Deh Cho had provided verbal assurances that the progress billing has been approved and that payment would be released prior to the end of July. We have now been advised Deh Cho is currently reviewing the details of the progress billing with payment expected to be received in the first week of August. We are not suggesting the need for an adjustment to the June Borrowing Base at this time in respect of this progress billing.

- AMEC-Colt JV - \$1.2 million - This project was substantially completed several months ago but AMEC has been withholding the final contract payment until a small amount of clean-up work is done. The invoice for this A/R Accrual was dated 6 March 2009 making it 93 days past due as at 6 June 2009 or 87 days past due as at 31 May 2009. Consequently, Management believes its use of the 31 May 2009 accounts receivable sub-ledger makes this amount eligible for inclusion in the June Borrowing Base. The final clean up of the project and ultimate payment date for the invoice remains uncertain. Management did not process the invoice in March 2009 because it did not want to remit the HST on the invoice. This practice creates the potential for HST liabilities in Specific Payables to be understated.

Although we have not concluded it is appropriate to exclude the AMEC A/R Accrual from the June Borrowing Base, we have shown it as a potentially non-compliant item at Exhibit A.

Eligible Inventory - \$5.3 million

A summary of the Company's inventory by division follows:

Raw Materials	3,862,276	914,588	423,775	598,573	378,608	6,177,820
WIP				289,890		289,890
Finished Goods	53,115	224,093	2,024,365	1,490,406	25,132	3,817,110
Total Book Value	3,915,391	1,138,681	2,448,140	2,378,869	403,740	10,284,820

Value?
Logs? if s
how old

Eligible Inventory for borrowing base purposes is 50% of raw materials and finished goods values plus 90% of EDC insured WIP, with a cumulative borrowing base limit cap of \$10.0 million. Raw materials and finished goods comprise the largest portion of June's Eligible Inventory while EDC Insured WIP portion is quite small. Exhibit E shows the Eligible Inventory of \$5.3 million included in the June Borrowing Base in respect of which we provide the following comments:

Raw Materials - \$6.2 million

The June Borrowing Base included \$3.1 million of Eligible Inventory based on the \$6.2 million of reported raw materials inventory of the operating divisions:

- ▶ Construction - \$3.8 million of rock raw materials inventory is located at various Company controlled quarries. The audited financial statements reported the 31 January 2009 raw materials value to be \$3.0 million. The increase since that date is principally attributable to increased stone crushing in relation to the paving contracts with the New Brunswick Department of Transportation.
- ▶ Fabrication and Machining (combined) - \$1.0 million of steel and consumable inventory primarily associated with the ongoing Deh Cho contract fabrication work, and consumable raw materials products manufactured directly by Machining; and
- ▶ Envirem Technologies - \$0.9 million comprised of approximately 50% packaging and 50% soil and mulch materials. Management has indicated the packaging levels are consistent with prior periods and given the nature of the packaging requirements (i.e., specialty branded packaging) large volumes of packaging are often purchased.

Finished Goods \$3.8 million

The June Borrowing Base included \$1.9 million of Eligible Inventory based on the \$3.8 million book value of finished goods. The Machining and Fabrication divisions cumulatively account for \$3.5 million (92%) of this value. This was significantly higher than the \$1.2 million book value reported in the 31 January 2009 audited financial statements. We have discussed this increase with Management who noted the follows items:

- ▶ A crusher financed by Caterpillar for \$837,000 was erroneously included twice in finished goods inventory of Fabrication resulting in a finished goods overstatement of \$728,000.
- ▶ Repair costs of \$142,000 for equipment owned by GE Capital were included in Fabrication's finished goods inventory.

Management agrees the effect of these inventory errors is a \$0.4 million overstatement of the Eligible Inventory in the June Borrowing Base. We have corrected this amount in Exhibit A.

Priority Payables - \$2.7 million

Priority payables are amounts owing by the Company which have or may have priority over the Bank's security. These amounts are referred to as "Specific Payables" in the June Borrowing Base report and totalled \$2.7 million (Exhibit A). Our comments on these amounts follow:

Due to Government of Canada - \$1.4 million

The June Borrowing Base shows the Government of Canada ("Canada Revenue Agency" or CRA) was owed \$0.7 million for HST and a further \$0.7 million for employee source deductions. HST and source deductions assessment notices received from CRA indicate \$2.3 million owing as at 6 June 2009. This is \$0.9 million more than included in the June Borrowing Base. With Management's concurrence, we

have shown the correction to the June Borrowing Base at Exhibit A. A comparison of the amounts included in the June Borrowing Base to the amounts in the CRA assessment notices is provided at Exhibit F.

Approximately \$0.4 million of this \$0.9 million difference arose from the inclusion of Atcon Civil and Dycon in the June Borrowing Base calculation and not in prior borrowing bases. As these entities were not parties to the previous credit agreement with the Bank, their source deduction liabilities were not included in the previous borrowing base calculations. Management now recognizes it must include the obligations of these two companies to CRA in future borrowing base reports. Management advised the remaining \$0.5 million of the variance arose because it had been focused on the recent refinancing and did not have enough time to fully reconcile the June Borrowing Base figures prior to submitting them to the Bank.

The Company had told CRA it would make a substantial payment in June 2009 from the refinancing proceeds to reduce its source deduction and HST arrears. However, the Company was unable to pay CRA because it had to use a portion of the refinancing to pay unbudgeted legal, banking and guarantee fees and unbudgeted interest on the subordinated debt. The Company then told CRA officials it will make a substantial payment in August from the anticipated collection of the Suncor account receivable discussed above.

The balance outstanding to CRA as at 20 July 2009 was \$3.1 million. This was comprised of the significant arrears discussed above plus the unremitted source deductions for the June and July 2009 payrolls. The Company's declining revenue levels are expected to result in a net HST refund claim for June and July however such claims have not yet been processed. Any such refunds will likely be held by CRA until such time as the Company pays its arrears.

Due to Provincial Governments - nil

Two provinces require prepayment of workers' compensation premiums which resulted in a \$46,000 credit balance in Due to Provincial Governments as at 6 June 2009 (Exhibit A). The other two provinces in which the Company primarily works require premiums to be paid by automatic deduction. It appears all workers' compensation premiums are current or prepaid.

Due to Employees - \$0.2 million

The Company accrued \$0.2 million for wages, commissions and vacation pay as at 6 June 2009 and had included this amount in the June Borrowing Base. We have reviewed this accrual with Management and believe the amount of this provision should have been \$0.8 million as at that date as noted in Exhibit G. This amount effectively represents the Company's potential obligations pursuant to the federal Wage Earner Protection Program Act. The impact of this adjustment on the June Borrowing Base is included in Exhibit A.

Due to Company Pension Fund - \$0.1 million

The June Borrowing Base shows approximately \$18,000 in Due to the Company Pension Fund which is actually a RRSP matching program for all full time staff. Management has subsequently confirmed the actual balance owing as at 6 June 2009 was \$99,000. The overstatement of \$81,000 is corrected in Exhibit A.

Liens other than permitted liens - \$1.1 million

The June Borrowing Base shows \$1.1 million in "Liens other than permitted liens". These amounts are listed on the last page of the June Borrowing Base as submitted (Appendix 1) and all but \$17,000 of these amounts were paid from the proceeds of the June refinancing. Of these amounts, \$0.6 million was related to lawsuits against the Company and \$0.5 million was property taxes which were due on 31 May 2009.

The Company has advised us the process it uses to determine the amount of "the liens other than permitted liens" for inclusion in the borrowing base is as follows:

- ▶ It identifies any registered liens that have been registered against Atcon which they believe have merit. If a claim is filed but Management does not believe it has merit, it does not include it;
- ▶ For Atcon Construction projects only (Management does not perform a similar assessment for any other related company) the CFO performs the following review:
 - ▶ Calculates project payables that are not current (i.e., past 30 days) ("Past Due Payables")
 - ▶ If Past Due Payables are less than project holdback with end customer - no provision made
 - ▶ If Contract is done on Crown lands - there is no provision made on the basis that contractors cannot lien crown assets

While Management did not identify any additional liens that should be deducted from the June Borrowing Base using the above process, we are concerned that the amount of valid "liens other than permitted liens" (e.g., construction liens) may be significantly understated and the June Borrowing Base overstated by an equal amount. For example, in support of Management's representations and warranties in the new credit agreement between the Company and the Bank dated 30 June 2009, Management attached Schedule 12.01 (h) which is a list of \$8.8 million of actions, suits or proceedings against the Company. Exhibit H is an analysis of these items and our comments on the more significant ones are provided below:

- ▶ Liens paid to Atcon's subcontractors on Suncor Project - \$5.8 million. These liens were not deducted from the June Borrowing Base yet they were paid in full a couple of weeks after the borrowing base date. Management advises they did not include them in the June Borrowing Base because they knew Suncor would be paying the sub-contractors directly with an equal reduction in amount it owed to Atcon. We have shown this \$5.8 million of liens as potentially non-compliant items in Exhibit A.
- ▶ Liens on the CNRL contract - \$1.5 million. Although the Bank has disqualified the CNRL account receivable from being included in Eligible Receivables, it still comprises part of the Bank's security. Consequently, we have shown the \$1.5 million as a potentially non-compliant item in Exhibit A.

EYI has asked the Bank's solicitors to provide an overview of the construction lien or construction deemed trust legislation for the provinces in which Atcon performs most of its work. Upon receipt of this overview, we will report to the Bank on whether the Company's lien calculation process produces an appropriate result.

Summary

Our review to date clearly show the Company has a serious working capital shortage and requires a significant equity injection or other arrangement that provides the Company with sufficient working capital to satisfy its existing liabilities as they become due and to fund its ongoing operations in a meaningful way.

We have identified in this report errors totalling \$2.8 million which have the cumulative effect of reducing the June Borrowing Base by 10% from \$26.2 million to \$23.5 million. Management agrees these items are in fact errors.

We have also identified a number of potentially non-compliant items totalling \$18.6 million (Exhibit A) which may or may not have been properly treated by Management in calculating the June Borrowing Base. Management believes no adjustment is necessary in respect of these items. In that regard, we make the following recommendations:

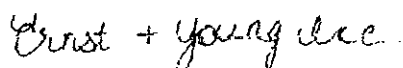
1. The Bank should review each of the potentially non-compliant items listed in Exhibit A to determine if additional adjustments to the June Borrowing Base are necessary; and
2. The Bank should meet with Management to review its borrowing base reporting requirements to ensure Management fully understands what it has to do each month to be fully compliant in calculating and reporting the borrowing base.

We trust the above is satisfactory and we are available to discuss the matters outlined in this report or any other matter with you at your convenience.

Yours faithfully,

ERNST & YOUNG INC.

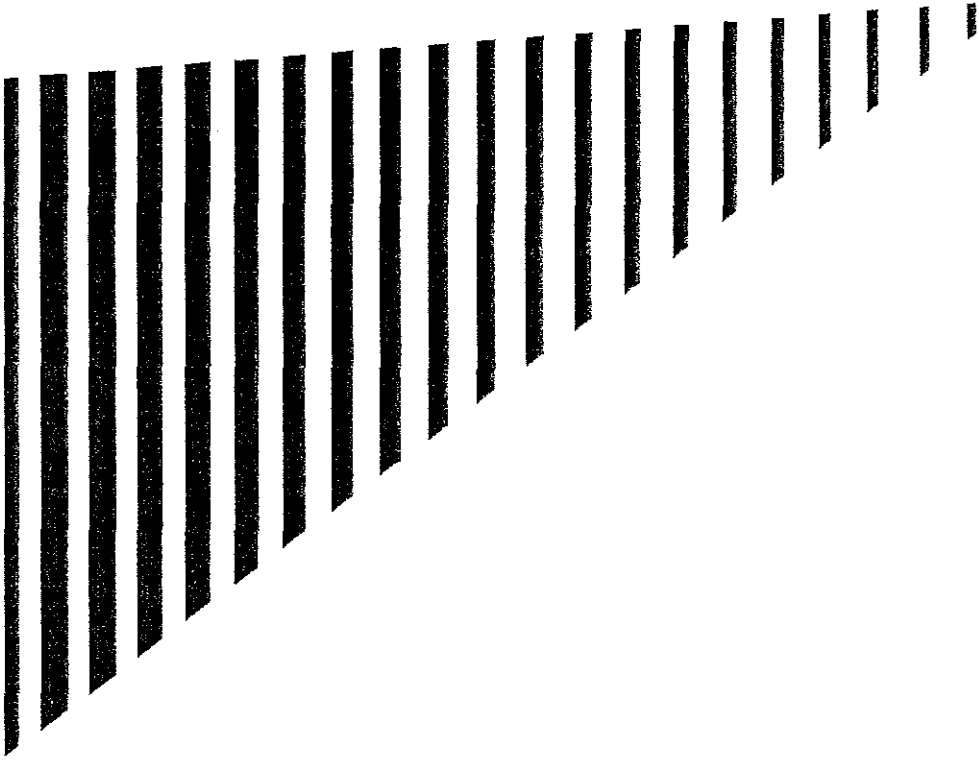
Per:



Paul D Hickey, CA•CIRP, Senior Vice President
George Kinsman, CA•CIRP, Senior Vice President
Mathew M Harris CA•CIRP, FCA, Senior Vice President

Attachments

APPENDIX



1308718 (10/00) (EXCEL)

BORROWING BASE CALCULATION

TO THE BANK OF NOVA SCOTIA - The following is a true statement of property of the kinds described in assignment(s) or other security interest(s) given by the undersigned to the Bank and of current liabilities, with values as at The said property is owned by the undersigned and is in the place or places designated in the said assignment(s) or other security interest(s). There are no security interests or charges on the property, held by parties other than the Bank, or specific payables which have or may have priority over the Bank's security, except as disclosed hereunder. <div style="display: flex; justify-content: space-between;"> <div>NAME AND</div> <div>Atcon Holdings Inc.</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div>AUTHORIZED SIGNATURE</div> <div> <u>see attached email for authorization - KD</u> Katrina Donovan - VP Finance & Administration </div> </div>	DATE 06-Jun-09
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SPECIFIC PAYABLES		06-Jun-09	BORROWING BASE CALCULATION		06-Jun-09
Amounts owing which have or may have priority over the Bank's security			(As calculated on next page)	Net Value	
Due to the Government of Canada for			Eligible Receivables	\$	23,646,258.94
• Sales and Excise taxes (including G.S.T.)		\$ 654,560.02	Eligible Inventory	\$	5,252,498.89
• Employee Deductions (UIC, CPP and Income Tax)		\$ 735,442.53	Sub-Total	\$	28,898,757.63
Due to Provincial governments for			LESS		
• Sales tax		\$ 0.00	• Security Interests or Charges Held by Other	\$	0
• Employee Deductions - QPP/ Que. Income Tax		\$ 0	Total Specific Payables †	\$	2,663,974.94
• Workers' Compensation Board		\$ (46,381.55)	† Amounts owing which have or may have priority over Bank's security		
Due to Employees (or accrued) for			BORROWING BASE	\$	26,234,782.69
• Wages, Commissions, Vacation Pay		\$ 229,447.59	LESS Operating Credit Use		
Due to the Company Pension Fund for			• Loans	\$	0
• Deductions from Employees		\$ 8,707.13	• BA's	\$	0
• Due to the Fund by the Company		\$ 8,913.10	• LG's	\$	0
• Unfunded past service cost		\$ 0	• LIC Accept	\$	0
(As per Auditor's Note No.)			• Net Overdrawn Account (Cash on hand less O/S cheques, if negative)	\$	0
Liens other than permitted liens		\$ 1,073,286.12	TOTAL OPERATING CREDIT USE	\$	39,457,048.00
Owing to growers/producers for deliveries of agricultural products within past 6 months (applicable only if Customer is a manufacturer and has given the Bank security under Section 427 of the Bank Act)		\$ 0	UNUSED BORROWING BASE	\$	(13,222,265.31)
Due to farmers, fishermen and aquaculturists for inventory received within the past 15 days (applicable only if the Bank holds security over inventory)		\$ 0	ESTABLISHED OPERATING CREDIT	\$	40,000,000.00
Other Specific Payables		\$ 0			
TOTAL SPECIFIC PAYABLES		\$ 2,663,974.94			

Date Inventory Last Examined by Branch		Fire Insurance payable to the Bank on Inventory	\$	
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CALCULATION OF ELIGIBLE RECEIVABLES		ACCOUNTS RECEIVABLE AGE ANALYSIS			
Accounts Receivable	\$ 49,964,251	TOTAL †	\$	49,964,251	
(After Allowance for Doubtful			% This	% Last	
Accounts of \$ 0)	\$ -	Amount	Year	Year	
LESS		• Up to 30 Days	\$ 17,504,162	35%	0%
• Inter Company A/R	\$ (1,973,012)	• 31 to 60 Days	\$ 4,211,015	8%	0%
• Offsets		• 61 to 90 Days	\$ 12,760,609	26%	0%
(i.e., where Payables exist to the same party -	0.00	Sub-Total	\$ 34,475,787	69%	0%
deductions not to exceed the Payable amount)	\$ -	• Over 90 Days	\$ 15,488,464	31%	0%
• Due by Employees	\$ -	Total †	\$ 49,964,251	100%	0%
• Over 90 days	\$ (15,488,464)				
	\$ -				
	\$ -				
	\$ -				
	\$ -				
ELIGIBLE RECEIVABLES					
(Amount must equal Total Eligible Value below)	\$ 32,502,775				

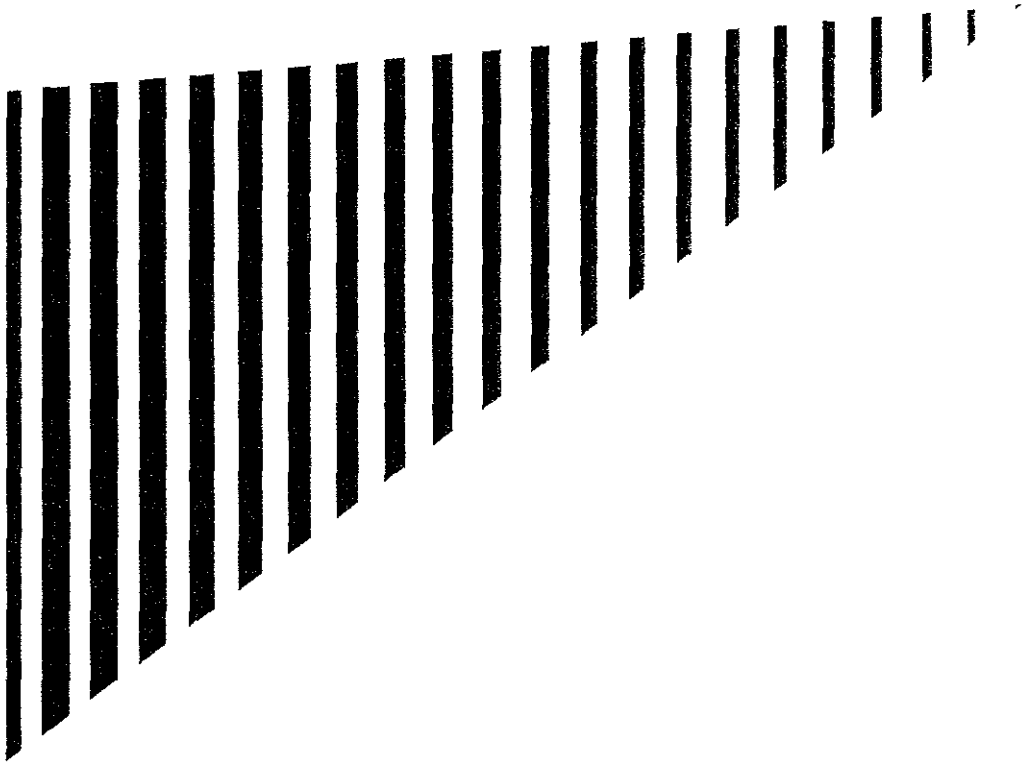
BORROWING BASE CALCULATION					
CATEGORY	VALUE	LESS	EQUALS	TIMES	EQUALS
Eligible	(omit 000's)	Unpaid Inventory Received Past 30 Days †	Eligible Value (omit 000's)	%	Net Value (omit 000's)
Cdn AR (under 90 days)	28,070,528.57		\$ 28,070,528.57	x 75%	= \$ 21,052,896.43
US AR (under 90 days)	160,513.01		\$ 160,513.01	x 60%	= \$ 96,307.81
EDC insured AR	2,774,505.23		\$ 2,774,505.23	x 90%	= \$ 2,497,054.71
*			\$ 0	x 0%	= \$ 0
(Carried forward to first page) Total Eligible Receivables			\$ 0		= \$ 23,646,258.94
Inventory					
• Finished Goods	\$ 3,805,374.33	\$ 0	= \$ 3,805,374.33	x 50%	= \$ 1,902,687.17
• Work in Progress (EDC insured)	\$ 289,890.73	\$ 0	= \$ 289,890.73	x 90%	= \$ 260,901.66
• Raw Materials	\$ 6,177,819.74	\$ 0	= \$ 6,177,819.74	x 50%	= \$ 3,088,909.87
• Other Inventory	\$ 0	\$ 0	= \$ 0.00	x 0%	= \$ 0.00
*	\$ 0	\$ 0	= \$ 0.00	x 0%	= \$ 0.00
*	\$ 0	\$ 0	= \$ 0	x 0%	= \$ 0.00
Total Eligible Inventory			= \$ 10,273,084.80		= \$ 5,252,498.69
Inventory Cap - \$					= \$ 0
Inventory Cap - % of Credit			= \$ 0		= \$ 0
(Carried forward to first page) Final Eligible Inventory					= \$ 5,252,498.68

† Exclude amounts owing to farmers, fishermen and aquaculturists reported under Specific Payables

Atcon Holdings
as per Credit agreement dated May 31, 2006
updated for default letter issued February 18, 2009

Guarantors	ACI	API	AVP	AIS - Mach	ETI	AIS - Fab	AMS	Holdings	Summary
Accounts Receivables									
up to 30 days	13,647,385.64	6,800.36	7,923.68	581,537.55	2,784,670.44	476,044.60	0.00		17,504,162.27
up to 30 days IC	(137,829.42)	(969.09)	(6,117.60)	(55,434.22)	(70,136.47)	(276,637.78)	0.00		(547,124.58)
Excluded CNRL	(613,669.72)	0.00	0.00	0.00	0.00	0.00			
31 to 60 days	3,444,195.46	807.60	0.00	263,036.41	109,060.35	393,915.67	0.00		4,211,015.49
31 to 60 days IC	(257,705.76)	(507.81)	0.00	(17,949.49)	(6,313.69)	(116,231.86)	0.00		(398,708.61)
Excluded CNRL	(572,262.43)	0.00	0.00	0.00	0.00	0.00			
61 to 90 days	11,703,668.18	0.00	724.01	12,569.83	9,550.72	1,034,096.71	0.00		12,760,609.45
61 to 90 days IC	0.00	0.00	(724.01)	(3,949.96)	(5,753.88)	(1,016,751.21)	0.00		(1,027,179.06)
Excluded CNRL	(305,364.94)	0.00	0.00	0.00	0.00	0.00			
Over 90 days	14,548,345.10	135,015.06	26,663.90	303,321.64	234,284.96	240,833.26	0.00		15,488,463.92
Excluded CNRL & non insured over 90 Envirem	0.00	0.00	0.00	0.00	(150,708.01)	0.00			
Over 90 days IC	(217,929.32)	(9,874.69)	(6,536.17)	(15,700.21)	(83,576.95)	(128,770.12)	0.00		(462,387.46)
Offsets									0.00
Due to Employees									0.00
US non EDC insured			0.00	115,238.53	45,274.49	0.00	0.00		160,513.01
EDC insured			0.00	258,204.23	2,416,301.00	100,000.00	0.00		2,774,505.23
Cdn non EDC insured - less than 90 days	26,908,417.01	0.00	1,806.08	406,367.36	359,501.99	394,436.13	0.00	0.00	28,070,528.57
Inventory									0.00
Raw material	3,862,276.01	378,608.00	0.00	598,572.72	914,587.80	423,775.21			5,177,819.74
WIP		67,803.75	0.00	590,116.72	1,406,000.00	1,841,747.00			3,905,667.47
Finished Goods	53,114.56	25,131.64	0.00	1,481,746.33	224,093.00	2,021,288.80			3,805,374.33
WIP EDC insured				289,890.73		0.00			289,890.73
Due to Government of Canada									
Sales taxes	652,173.00	(5,456.65)	(2,369.62)	15,246.31	103,052.21	(108,085.23)		0.00	654,560.02
Employee deductions	31,618.42	969.45	0.00	101,212.51	83,037.19	159,561.52	359,043.44		735,442.53
Due to Provincial Government									
Sales taxes	0.00		0.00						0.00
Workers Comp	(64,903.46)	549.58	0.00	7,230.27	3,897.12	6,844.94			(46,381.55)
Due to Employees									
Wages, Commissions, Vacation pay	0.00	14,588.55	0.00	34,736.44	26,526.53	153,596.07			229,447.59
Due to Company Pension Fund									
Deductions from Employees	526.86	192.30	0.00	2,083.73	1,739.63	4,164.61			8,707.13
Due to the fund by the company	526.86	192.30	0.00	2,289.70	1,739.63	4,164.61			8,913.10

EXHIBITS



Priority claims

1,073,286.12

1,073,286.12

Kildair	338,147.67	Paid from Trust on closing on financing
Frederick Dunster	36,442.50	NB Vendor
Russel Metals	114,123.33	NB Vendor
Rideout Tool	16,536.58	
Eastern Fence	47,220.85	NB Vendor
Group Savoie	45,815.19	NB Vendor
Property taxes due May 31, 2009	475,000.00	
	1,073,286.12	

Atcon Group
June Borrowing Base Analysis

	Reported Borrowing Base						Adjusted Borrowing Base		Potentially Non-compliant Items			
	Values	1	2	3	4	5	subtotal	Values	6	7	8	Total
Eligible Receivables	23,646,259	(777,282)					(777,282)	22,868,977	(8,008,974)	(2,431,475)		(10,440,448)
Eligible Inventory	5,252,499		(435,370)				(435,370)	4,817,129				
Sub-Total	28,898,758	(777,282)	(435,370)				(1,212,652)	27,686,106	(8,008,974)	(2,431,475)		(10,440,448)
Less:												
Total specific payables												
- Due to Government of Canada - (sales and excise taxes)	(654,560)			(512,219)			(512,219)	(1,166,779)				
- Due to Government of Canada - (employee deductions)	(735,443)			(417,767)			(417,767)	(1,153,210)				
- Workers Compensation Board	46,382						0	46,382				
- Due to employees	(229,448)				(530,553)		(530,553)	(760,001)				
- Due to the Company pension fund - (employee)	(8,707)					(40,469)	(40,469)	(49,176)				
- Due to the Company pension fund - (employer)	(8,913)					(40,469)	(40,469)	(49,382)				
- Liens other than permitted liens	(1,073,286)							(1,073,286)			(8,192,192)	(8,192,192)
Sub-Total	(2,663,975)	0	0	(929,986)	(530,553)	(80,937)	(1,541,476)	(4,205,451)	0	0	(8,192,192)	(8,192,192)
6 June 2009 Borrowing Base	26,234,783	(777,282)	(435,370)	(929,986)	(530,553)	(80,937)	(2,754,128)	23,480,655	(8,008,974)	(2,431,475)	(8,192,192)	(18,632,640)

- Item 1: Adjust for duplicate Deh Cho accrual
Item 2: Adjust for duplicate finished goods inventory entry and capitalization of crusher repair costs
Item 3: Adjust for underreported HST and source deduction liabilities
Item 4: Adjust for underreported wage accrual
Item 5: Adjust for underreported pension accrual
Item 6: Accounts receivable included in borrowing base which are greater than 90 days old
Item 7: Accrued invoices that are out of period
Item 8: Liens not included in the borrowing base

Atcon Group
Accounts Receivable Borrowing Base - Calculation
As at 6 June 2009

	Atcon Construction Inc.	Envirem Technologies Inc.	Atcon Industrial Services - Fabrication	Atcon Industrial Services - Machining	Atcon Plywood	Atcon Veneer	Total
Total 3rd Party Trade Accounts Receivable < 90 days per subledger	16,528,037	2,799,787	493,193	771,587	3,360	1,806	20,597,770
Adjustments							
CNRL A/R -specifically disqualified for Borrowing Base purposes	(1,491,297)						(1,491,297)
AIT - payment applied to incorrect aging category	962,281						962,281
Restated 3rd Party Trade Accounts Receivable < 90 days	15,999,021	2,799,787	493,193	771,587	3,360	1,806	20,068,754
Add: Atcon Construction May Accruals							
Deh Cho May billings	4,797,420						4,797,420
Pennecon Heavy Civil Ltd. Inv. #1002296	20,311						20,311
AMEC Thickener Holdback billed 6 March	1,241,966						1,241,966
DOT Chance Harbour PE	538,417						538,417
Albian Invoice # 1002253	722,055						722,055
Vale Inco	585,000						585,000
Suncor Progress Billing	2,000,000						2,000,000
	9,905,170						9,905,170
Add : Deh Cho April Accrual included in error (see below)	1,036,376						1,036,376
Accounts Receivable eligible for June Borrowing Base per Management	26,940,567	2,799,787	493,193	771,587	3,360	1,806	31,010,300
Less: US Non-EDC Insured AR							
ETI - Fraser Paper (invoice is >30days)		(50,027)					(50,027)
AIMS - Michelin (excluded from EDC Insurance)				(115,239)			(115,239)
US Accounts Receivable under 90 days eligible for Borrowing Base	0	(50,027)	0	(115,239)	0	0	(165,266)
Less: EDC Insured AR							
Envirem		(2,416,302)					(2,416,302)
AMS Fabrication (Metso Minerals limit \$100,000)			(100,000)				(100,000)
AMS Machining				(258,204)			(258,204)
EDC Insured Accounts Receivable eligible for Borrowing Base	0	(2,416,302)	(100,000)	(258,204)	0	0	(2,774,506)
Canadian Accounts Receivable under 90 days eligible for Borrowing Base	26,940,567	333,458	393,193	398,144	3,360	1,806	28,070,528
BORROWING BASE EFFECT							
	Book Value	Margining	Borrowing Base from AR				
Eligible Receivables							
Canadian Accounts Receivable under 90 days	28,070,528	75%	21,052,896				
US Accounts Receivable under 90 days	165,267	60%	99,160				
EDC Insured Accounts Receivable	2,774,506	90%	2,497,055				
Total Eligible Receivables	31,010,300		23,649,111				
Adjustment Required to Eligible Receivables							
To correct Deh Cho April accrual error (see above)	1,036,376	75%	(777,282)				

Exhibit C

**Atcon Group
Atcon Construction Inc.
Aged Invoices Included in Borrowing Base which are Over 90 days**

Customer	Invoice #	Invoice Date	Days Aged	Amount In	
				Invoice Amount	Borrowing Base
Suncor Energy Services	1002181	3/06/09	93	3,968,790.00	2,976,592.50
Suncor Energy Services	1002133	3/02/09	97	3,048,857.49	2,286,643.12
Deh Cho Bridge Corp.	1002183A	3/06/09	93	1,512,434.26	1,134,325.70
Department of Transport New Brunswick	1002175	3/06/09	93	657,491.80	493,118.85
Department of Transport New Brunswick	1002175CR	3/06/09	93	(135,600.00)	(101,700.00)
AMEC - Colt JV	1002174	3/06/09	93	538,454.88	403,841.16
Pennecon Heavy Civil Ltd.	1002182	3/06/09	93	525,000.00	393,750.00
*Gowlings in Trust re: AIT/CNRL contract	1002033 & 1002114	1/29/09	129	486,412.98	364,809.74
AMEC - Colt JV	1002134	3/05/09	94	76,790.34	57,592.76
Total				10,678,631.75	8,008,973.81

Exhibit D

Atcon Group
Atcon Construction Inc.
Accounts Receivable Accruals

Customer	Invoice #	Invoice Date	Amount	Accrual Eligible - per EYI	Potentially Non-Compliant Accrual	Potential Borrowing Base Effect
Deh Cho Bridge Corp.	N/A	N/A	4,797,420	4,797,420		
Suncor Energy Services (Hwy 63)	1002331	6/05/09	2,000,000		2,000,000	1,500,000.00
AMEC Thickener Holdback billed March 6th	Manual	3/06/09	1,241,966		1,241,966	931,474.61
Vale Inco	1002322	6/05/09	585,000	585,000		
Pennecon Heavy Civil Ltd. Inv. #1002296	1002296	5/09/09	20,311	20,311		
Albian	1002253	6/15/09	722,055	722,055		
DOT Chance Harbour PE	1002250	6/01/09	538,417	538,417		
Total			9,905,169.66	6,663,203.51	3,241,966.15	2,431,474.61

**Atcon Group
Inventory Analysis
As at 6 June 2009**

	Atcon Construction Inc.	Envirem Technologies Inc.	Atcon Industrial Services - Fabrication	Atcon Industrial Services - Machining	Atcon Plywood	Total
Raw Materials	3,862,276	914,588	423,775	598,573	378,608	6,177,820
WIP				289,890		289,890
Finished Goods	53,115	224,093	2,024,365	1,490,406	25,132	3,817,110
Total Book Value	3,915,391	1,138,681	2,448,140	2,378,869	403,740	10,284,820

	Book Value	Margining	Eligible Inventory
INVENTORY			
Raw Materials	6,177,820	50%	3,088,910
WIP	289,890	90%	260,901
Finished Goods	3,817,110	50%	1,908,555
Total Eligible Receivables	10,284,820		5,258,366
Difference - immaterial			(5,868)
Reported in June Borrowing Base			5,252,498

Atcon Group
CRA Analysis - Deemed Trust Claims
As at 6 June 2009

Company	Notice of Assessment Values As at 6 June 2009			Reported Borrowing Base As at 6 June 2009			Borrowing Base Overstatement As at 6 June 2009		
	HST	Payroll	Total	HST	Payroll	Total	HST	Payroll	Total
Atcon Construction	1,004,079	62,428	1,066,507	652,173	31,619	683,792	351,906	30,809	382,715
Atcon Civil	0	181,353	181,353				0	181,353	181,353
Dycon Construction Payroll	0	206,573	206,573				0	206,573	206,573
Atcon Plywood	(6,856)	0	(6,856)	(7,825)	969	(6,856)	969	(969)	0
Atcon Industrial Services Fabrication	(37,196)	159,562	122,366	(108,085)	159,561	51,476	70,889	1	70,890
Atcon Industrial Services Machining	15,246	101,213	116,459	15,246	101,212	116,458	0	1	1
Envirem Technologies	191,506	83,037	274,543	103,052	83,037	186,089	88,454	0	88,454
Atcon Management Services	0	359,043	359,043		359,043	359,043	0	0	0
Total	1,166,780	1,153,208	2,319,988	654,561	735,441	1,390,002	512,219	417,767	929,986

Exhibit G

Atcon Group Employee Claims As at 6 June 2009

Pay date Pay period ending	# Employees	Net Wages Payable		Avg Pay Per Employee	Severance Applicable	Severance	Vacation
		4 June 30 May	11 June 6 June			Calculation at 2 weeks	Pay Calculation at 2 weeks
Atcon Civil	87	0	141,343	1,625	No		
Atcon Construction	10		13,494	1,349	Yes	13,494	13,494
Atcon Industrial Services - Fabrication	75	116,713	821	1,567	Yes	117,534	117,534
Atcon Industrial Services - Machining	48	61,152		1,274	Yes	61,152	61,152
Atcon Management - staff	25	21,100		844	Yes	21,100	21,100
Atcon Management - senior management	61	150,000		2,459	Yes	150,000	150,000
Atcon Plywood	1			0	Yes	0	0
Dycon Construction	7	14,806	16,182	4,427	No		0
Envirem	66	71,272		1,080	Yes	71,272	71,272
	<u>380</u>	<u>435,043</u>	<u>171,840</u>	<u>1,597</u>		<u>434,552</u>	<u>434,552</u>
		50%	100%				
		<u>217,522</u>	<u>171,840</u>				
Wage Provision			<u>389,362</u>				

Actual Amounts Outstanding

Accrued wages as at 6 June 2009 - (net wages only as deemed trust claim previously calculated)	389,362
Accrued severance (2 weeks per employee)	434,552
Accrued vacation pay (2 weeks per employee)	434,552
A	<u>1,258,466</u>

WEPPA Calculation

WEPPA claim calculated to the maximum of \$2,000 per employee	B	<u>760,000</u>
Lesser of A and B		760,000
Less: Allowance per borrowing base		<u>(229,447)</u>
Employee claims understatement		<u>530,553</u>

Atcon Group
Liens Other than Permitted Liens
As at June 6, 2009

	Actions Suits or Proceedings as Reported in June Borrowing Base	Actions Suits or Proceedings as Reported in June Borrowing Base	Potentially Non-Compliant Actions, Suits or Proceedings Not Reported in June Borrowing Base				Notes
			Suncor	CNRL	Other without Merit	Other with Merit	
Atcon Construction Inc.							
Kildair Services Ltd.	338,148	338,148					0 Note 1
Alco Structures Inc.		17,334		17,334			17,334 Note 2
PTI Premium Camp Services Inc.		650,716		650,716			650,716 Note 2
Noralta Lodge Ltd.		281,454		281,454			281,454 Note 2
Genivar Consultants Limited Partnership		335,464	335,464				335,464 Note 3
United Rentals		124,155		124,155			124,155 Note 2
United Rentals		222,944		222,944			222,944 Note 2
United Rentals		47,973		47,973			47,973 Note 2
United Rentals		28,275		28,275			28,275 Note 2
Stantec Consulting Ltd.		131,547		131,547			131,547 Note 2
Can-Traffic Services Ltd.		2,811,739	2,811,739				2,811,739 Note 3
Neutrino Trucking Services Ltd.		2,638,669	2,638,669				2,638,669 Note 3
Bruce Rendell		15,000			15,000		15,000 Note 4
Kevin Pytk		600,000			600,000		600,000 Note 4
Jose Rodriguez		50,000			50,000		50,000 Note 4
Envirem Technologies Inc.							0
Frederic Dunster & Sons Ltd.	36,443	36,443					0 Note 1
Canadian National Railways - (USD claim)		165,169			165,169		165,169 Note 5
Atcon Industrial Services Inc.							0
Russel Metals Inc.	114,123	114,123					0 Note 1
Russel Metals Inc.		71,753				71,753	71,753 Note 6
Rideout Tool and Machine Inc.	16,537	16,537					0 Note 7
Eastern Fence Limited	47,220	47,220					0 Note 1
Atcon Plywood Inc.							0
Group Savoie Inc.	45,815	45,815					0 Note 1
Property Taxes due May 31, 2009	475,000	not reported					0 Note 1
	<u>1,073,286</u>	<u>8,790,478</u>	<u>5,785,872</u>	<u>1,504,398</u>	<u>830,169</u>	<u>71,753</u>	<u>8,192,192</u>

Business N.B.
Enterprises N-B
Records Management

Note 1 - Paid from trust on closing of financing

Note 2 - Lien pertains to CNRL contract. As CNRL receivables are excluded from the Borrowing Base, management has not adjusted for these liens in calculating the June 6 Borrowing Base

Note 3 - Lien pertains to the Suncor contract. An agreement was reached in June 2009 whereby Suncor paid these lien claims directly and thereby reduced its outstanding accounts receivable owing to Atcon Construction.

Note 4 - Employee wrongful dismissal claims which Management believe are without merit.

Note 5 - Claim filed relating to product shipped to Atcon by Morse Brothers (a bankrupt US entity). Management believe claim has no merit as shipping costs were obligations of Morse and not Atcon.

Note 6 - Lien relates to unpaid construction materials associated with the fabrication facility expansion.

Note 7 - All 30 June 2009 reported lien items have been paid with the exception of the Rideout Tool & Machine claim of \$16,537.

BUSINESS NEW BRUNSWICK

SUMMARY OF REQUEST

DATE: August 10, 2009

COMPANY:

Name: Atcon Holdings Inc.

Location: Miramichi, NB

Principal(s): Robert Tozer

Nature of Business: Heavy metal manufacturing, machining and fabrication, plywood manufacturing and construction.

Employment: Present: 380 (Atcon group)

ASSISTANCE:

Request From Company:

1. \$ 2,000,000 that was previously approved for capital projects be disbursed for working capital.
2. That the Province release their first security interest in Brunway Highway Operations in favour of the Bank of Nova Scotia. (to enable bank financing of up to \$3.0 million for working capital)

Recommendation:

It is recommended Business New Brunswick not agree to the request.

Will Recommendation be Acceptable to Client: Yes ___ No X Unknown ___

Strengths of Proposal:

- Allows one month of breathing room
- Keeps the bank at bay briefly
-

Weaknesses:

- Considerably more working capital funding is required
- Only a temporary "band-aid" fix
- Weakens the BNB security position
- Sales have slowed considerably
- Would result in a funding shortfall on the construction of the Fabrication shop
- Company is unpredictable
- No resolution in sight
- Current financial position unknown

ECONOMIC PAYBACK:

(See Section 11)

RISK ASSESSMENT:

(See Section 12)

Low _____ Medium _____ High X

KEY ISSUES:

- Company has a cash burn rate of close to \$1 million per week
 - This funding would essentially only get the Company to the end of August
 - Would be using funds intended for Fab shop construction for working capital
- The Company is offside on their borrowing base calculation by at least \$16 million as at June 6, 2009.
 - Initially reported to the bank as a deficiency of \$13.2 million, but Ernst and Young found errors amounting to an understatement in the margin shortfall of \$2.8 million
 - Current borrowing base (July 2009) shortfall is believed to be over \$10 million
 - Held cheques total \$12.5 million (including \$2.86 million to CRA for HST and payroll)
- The Company is in a serious dire financial position
 - This additional cash will not solve the problem
 - May only delay a complete collapse
 - Considerably more working capital funding will be required (could be in excess of \$15 to \$20 million)
- If any further advances are to be made, further personal guarantees should be secured. Every step taken by the province further erodes our security position, from bad to worse. This needs to be offset by garnering further security, from ALL possible sources (Spouses, children, etc...)

SCHEDULE "A"

EVALUATION OF COMPANY

Company History: The Atcon Group consists of 16 companies involved in construction, metal working and machining, and manufacturing of value-added wood products. They claim to at one time have had 2,000 employees in North America and Sweden with office crews in Calgary and Fort McMurray. They currently use people from Miramichi for construction jobs in Western Canada having them onsite for 4 weeks and two weeks home with Atcon taking care of flights and accommodations.

Plant Facilities: The Company operates from four separate facilities in Miramichi.

Product(s)/Technology:

Highway logging trailers, fork lift loading ramps, steel and aluminum pallets, material handling equipment, mining, quarrying and ore dressing machinery, conveyors, rock crushers, structural steel beams, etc. The products are complex and require multiple and interdependent stages.

Raw-Material Resource: The primary raw material consists of steel which is readily available.

Marketing/Distribution:

The target markets are in the energy infrastructure industry with a particular focus on the Alberta Oil Sands as well as the wind energy sector.

Competition:

Competition is not an issue for the energy market they are targeting in Alberta. The manufacturing capacity appears to be the key in order to secure contracts in this market. However, internal competition in NB could be an issue as the company may be competing with Ocean Steel & Construction, MQM Mandate, and York Steel Inc for future contracts.

Management:

The organization is supported by the following persons within the Atcon Group:

Gary Tozer - Senior project manager and former Trac plant manager with 32 years experience in design and fabrication of mechanical equipment and large structural steel projects.

Katrina Donovan – VP Finance and CFO.

James Clark - Chief engineer for the Atcon Group with 21 years experience as a mechanical engineer in project management, construction and industrial maintenance.

Robert Tozer - CEO and President of the Atcon Group with 32 years experience as manager for large

civil projects, aggregate and mining operations and equipment fabrication.

Bill McLeod- Plant Manager- 20 years experience with the former Maritime Steel facility.

Sales for Atcon are generated through the combined effort of the following persons:

Robert Tozer-CEO

Mark Ledwell-Vice President and General Counsel

Gordon Burns-VP Sales and Business Development

Financial:

Atcon Holdings (Parent Company):

Year end audited consolidated statements at January 31, 2009 show revenues of \$255 million, and a net loss of \$ 807,000 including depreciation of \$4.6 million. The Company had total assets of \$201.9 million, equity of \$34.8 million and A/R and inventory totalling \$100 million at that time.

Sales revenues have dropped off since the January 31, 2009 year end, resulting in decreases in receivables and inventory (the bank's primary security on the \$40 million credit line). Current levels of A/R and inventory are now half of the \$100 million amount reported in January 31, 2009. The biggest concern with the current financial situation is that the Company was over its borrowing base, as of June 6, 2009 by AT LEAST \$16 million whereas \$39.5 million was outstanding on the credit line. Atcon had originally reported to the bank that they were offside of the borrowing base by \$13.2 million. The bank was concerned with some of the reporting and hired Ernst and Young (E&Y) as an independent agency to examine the calculation. Their findings revealed several discrepancies, all of which worked to increase the borrowing base, and thus shrink the amount by which Atcon was reporting to be over their borrowing base. There were also several items that E&Y considered grey areas, and could lead to a further reduction in borrowing base, depending upon interpretation. These items would further reduce the borrowing base by an additional \$18 million, leaving Atcon with a borrowing base of only \$5 million.

The above resulted in the bank reducing its operating credit balance to \$28 million; however a borrowing base shortfall of at least \$10 million is believed to exist currently.

The company has held cheques in the amount of \$12.5 million. The Company writes cheques and then holds them until they have the cash on hand to release them.

Interim company prepared (July 3, 2009) financials have been requested and are outstanding, as are current payables, receivables, and current contract statuses.

Sales for the first 18 weeks ending June 6, 2009 are down significantly from the previous year and below forecast. The breakdown is as follows

	<u>May 31, 2008</u>	<u>June 6, 2009</u>	<u>Forecast (To June 6/09)</u>
Sales	\$68,752,220	\$29,077,851	\$35,464,200
Gross Margin	\$ 3,142,700	\$ (31,474)	\$ 4,672,812

Schedule "B"

Assistance provided to the Atcon Group is as follows:

Alcon Veneer Products Inc. (outstanding assistance \$0)

2004 - \$290,000 term loan guarantee

2004 - \$300,000 working capital loan guarantee

This assistance was approved but never put in place due to changes in the company's plans.

Atcon Plywood Inc.:(outstanding assistance \$2,490,000)

1999 - \$2,500,000 loan guarantee (since released)

1991 - \$1,250,000 forgivable loan (forgiven as agreed based on employment)

2004 - \$2,500,000 guarantee issued and outstanding (balance about \$950,000)

2004 - \$4,000,000 Bridge loan issued. Outstanding balance is \$1,540,000.

Skyway Wood Products (Eastwood Furniture): (outstanding assistance \$377,000)

1997 - \$384,000 loan and a \$532,000 forgivable loan from the CFB Chatham Redevelopment Fund. This company has been closed. The \$137,000 balance of the Loan and the unforgiven portion of the forgivable loan, estimated to be \$240,000, should be repaid by the Atcon Group.

ARVIN: (outstanding assistance \$350,000)

2000 - \$400,000 forgivable loan (not fully advanced). This is in connection with the renovations to the former TechSea building. The company has moved its production equipment into the building and is starting to create the 80 required jobs. The long delay in the move and job creation results from the devastating effects of the closure of COM DEV in Moncton, which was Arvins biggest customer.

Envirem Technologies: (Outstanding assistance \$16,000)

2001 - \$100,000 loan and a contribution of 100 acres of land at CFB Chatham. Agreement being met. Loan balance about \$16,000.

Atcon Group

2000 - \$50,000 grant cost sharing of bid preparation.

Nelson Venture Capital

\$210,000 venture capital loan made to the employees of Nelson Forest Products. Atcon assumed this liability and it has been repaid.

Nutritec (outstanding assistance \$750,000)

A \$100,000 loan has been made to Nutritec Inc., which is a joint venture between Atcon and Couvoir Westco. 2007 - \$650,000 repayable loan was made to Nutritec.

Atcon Construction

Summary of conference call with NWT government representatives

June 23, 2009

1. The Bridge is in its second season of construction, with 4 of the eight bridge piers built.
2. Plan for this summer is to complete the remaining four piers in anticipation of adding the superstructure next year.
3. The superstructure design changes are expected to be completed and approved by late fall.
4. Atcon will be required to provide a new price for the revised superstructure work. If the revised price is unacceptable to the Bridge Corporation (and the NWT Govt.), Atcon could conceivably lose the contract. However, that would result in a monetary settlement to Atcon and the release of the Minister's \$13 million guarantee.
5. The delay in the approval of the design is expected to result in a one year delay in the completion of the bridge.
6. Atcon has four outstanding notices of default from the Deh Cho Bridge Corporation. These concern the failure to provide a concrete plant with the capacity specified in the contract, failure to provide adequate engineering oversight, non-payment of sub-contractors, and the work stoppage.
7. Atcon has had serious conflicts with a major sub-contractor which has resulted in work on the bridge being stopped. NWT sees this conflict as resulting from Atcon failure to pay \$1 million of a \$2.5 million progress payment to the sub-contractor, and refusing to agree to a \$2 million payment directly from the Deh Cho Bridge Corporation to the Sub-contractor.
8. In order to get the work started, The Bridge Corporation has entered into a temporary agreement with the sub-contractor to do the work directly for the Corporation rather than as a sub-contractor. This arrangement will affect only the general management of this summer's construction season and the construction of the remaining four bridge piers. Atcon will still provide the steel components and the work camps.

Overall, the company is on the verge of collapse. An infusion of \$2 million to working capital, and \$3 million in security will not be adequate to pull the Company through this period.

The amount required to sustain the Company is unknown, as forecasted cash flows and current financial statements have not been provided by the Company. Given the magnitude of the current borrowing base shortfall (\$10 million), held cheques (\$12.5 million) and accounts payable (approximately \$16 million), incremental funding requirements could easily exceed \$15 or \$20 million, with no source in sight.

Given this, and the risk associated with the future of the bridge contract and the lack of security, the requested assistance cannot be recommended.

Atcon Industrial Services (outstanding assistance \$6,310,000)

2008 - \$3,060,000 forgivable loan
2008 - \$3,250,000 repayable loan
2008 - \$1,190,000 contribution from RDC

Atcon Holdings (outstanding assistance \$61,362,845)

2008 - \$13,362,845 loan guarantee (Letter of credit on bridge project)
2009 - \$20,000,000 loan guarantee to eliminate McKenna Gale subordinated debt
2009 - \$20,000,000 term loan guarantee – working capital
2009- \$10,000,000 building loan (\$8 million advanced)

Total outstanding assistance to the group is approximately \$71,600,000.

9. The financial impact on Atcon will be a decrease in revenues of \$15-20 million, offset by a corresponding decrease in sub-contractor costs. The net financial impact is not significant.

At this point in time, it would appear that the only real impact on Atcon will be the loss of the mark-up of the sub-contract work on the bridge piers this summer.

There could be much more serious issues later this fall and next year if Atcon's revised price for the superstructure is unacceptable or if Atcon is unable to make peace with its sub-contractors.

There was no question that the NWT government representatives are highly dissatisfied with Atcon's performance as general contractor, and it was implied that the Deh Cho Bridge Corporation shares that opinion of Atcon's performance.

Atcon Holdings Inc.

Consolidated Statement of Earnings and Retained Earnings

(Unaudited)

	18 weeks ended					5 weeks ended				
	June 6, 2009 Act	% of sales	June 6, 2009 For	% of sales	Act vs For Var B(W)	June 6, 2009 Act	% of sales	June 6, 2009 For	% of sales	Act vs For Var B(W)
Net revenues	\$ 29,077,851	100.0%	\$ 35,464,200	100.0%	\$ (6,386,349)	\$ 8,034,922	100.0%	\$ 9,080,400	100.0%	\$ (1,045,478)
Direct expenses	19,125,340	65.8%	18,560,456	52.6%	(564,884)	6,592,483	82.0%	5,152,679	56.7%	(1,439,804)
Wages, salaries and benefits	9,883,985	34.3%	12,130,933	34.2%	2,246,948	2,962,717	36.9%	2,707,903	29.8%	(254,815)
	29,109,325	100.1%	30,791,389	86.8%	(1,682,064)	9,555,200	118.9%	7,860,582	86.6%	(1,694,618)
Gross margin	(31,474)	-0.1%	4,672,812	13.2%	(4,704,286)	(1,520,278)	-18.9%	1,219,819	13.4%	(2,740,097)
General and administrative expenses	1,906,911	6.6%	2,525,209	7.1%	(618,298)	496,365	6.2%	678,112	7.5%	(181,747)
Earnings before interest, income taxes, depreciation and amortization	(1,938,385)	-6.7%	2,147,603	6.1%	(4,085,988)	(2,016,643)	-25.1%	541,706	6.0%	(2,558,349)
Depreciation and amortization	1,327,180	4.6%	1,369,644	3.9%	(42,464)	378,972	4.7%	409,917	4.5%	(30,945)
Earnings from operations	(3,265,565)	-11.2%	777,959	2.2%	(4,043,524)	(2,395,615)	-29.8%	131,789	1.5%	(2,527,404)
Interest and bank charges	799,122		1,034,253		(235,131)	335,362		119,836		(215,526)
Interest on long term debt	2,025,107		1,980,764		(44,343)	525,050		513,850		(11,200)
	2,824,229		3,015,017		(190,788)	860,412		633,786		(226,626)
Earnings before income taxes and equity in earnings of companies subject to significant influence	(6,089,794)		(2,237,058)		(3,852,736)	(3,256,027)		(502,000)		(2,754,027)
Income taxes										
Current	(851,333)		(27,837)		(823,496)	(419,333)		27,960		(447,293)
Future	(918,557)		(695,238)		(223,319)	(421,367)		(175,210)		(246,157)
	(1,771,000)		(723,075)		(1,047,925)	(840,700)		(148,230)		(692,470)
Earnings before equity in earnings of companies subject to significant influence	(4,318,794)		(1,513,983)		(2,804,811)	(2,415,327)		(353,770)		(2,061,557)
Equity in earnings of companies subject to significant influence	-		240,000		(240,000)	-		60,000		(60,000)
Net earnings	\$ (4,318,794)		\$ (1,273,983)		\$ (3,044,811)	\$ (2,415,327)		\$ (293,770)		\$ (2,121,557)
Retained earnings, beginning of period	\$ 34,844,169		\$ 34,844,169		\$ -	\$ 32,940,700		\$ 33,863,956		\$ (923,256)
Net earnings	(4,318,794)		(1,273,983)		(3,044,811)	(2,415,327)		(293,770)		(2,121,557)
Retained earnings, end of period	\$ 30,525,375		\$ 33,570,186		\$ (3,044,811)	\$ 30,525,374		\$ 33,570,186		\$ (3,044,812)
Segment summary	Actual					Actual				
	Rev	EBITDA	Rev	EBITDA		Rev	EBITDA	Rev	EBITDA	
Construction	\$ 19,902,133	\$ (1,945,741)	\$ (897,867)	\$ (2,889,241)		\$ 5,925,985	\$ (1,442,194)	\$ 925,985	\$ (1,615,694)	
Wood	27,480	(373,615)	27,480	(88,910)		3,956	(91,825)	3,956	(18,714)	
Environmental	4,139,624	605,520	(1,074,576)	(471,138)		1,560,048	113,303	(445,352)	(182,015)	
Steel	7,128,794	322,696	(2,801,206)	(569,454)		1,419,014	(51,642)	(655,965)	(197,641)	
Corporate	(2,120,180)	(547,245)	(1,640,180)	(67,245)		(874,081)	(544,285)	(874,081)	(544,285)	
Total	\$ 29,077,851	\$ (1,938,385)	\$ (6,386,349)	\$ (4,085,988)		\$ 8,034,922	\$ (2,016,643)	\$ (1,045,478)	\$ (2,558,349)	

SCHEDULE "D"

Atcon Holdings Inc.
Consolidated Balance Sheet

(Unaudited)

June 6,
2009

January 31,
2009

Assets

Current

Receivables	\$ 53,286,545	\$ 63,337,052
Inventories	45,154,312	49,310,415
Prepaid expenses	5,338,188	3,607,785
	<u>103,779,046</u>	<u>116,255,252</u>

Receivable from parent company, non-interest bearing

no set terms of repayment	12,348,752	12,129,604
Accrued investment tax credits	5,264,236	5,215,823
Property and equipment	63,224,561	63,555,452
Future income tax	3,600,660	1,126,917
Other assets	3,030,244	3,589,468

	<u>\$ 191,247,498</u>	<u>\$ 201,872,515</u>
--	-----------------------	-----------------------

Liabilities

Current

Bank indebtedness	\$ (183,418)	\$ 492,144
Lines of credit	39,548,606	39,723,330
Payables and accruals	34,881,579	41,410,947
Income taxes payable	436,322	999,734
Future income taxes, net	7,817,000	6,618,128
Current portion of long term debt	17,387,087	6,791,473
	<u>99,887,176</u>	<u>96,035,755</u>

Long term liabilities

Long term debt	20,457,012	22,149,575
	<u>9,647,018</u>	<u>18,020,882</u>
	<u>129,991,206</u>	<u>136,206,212</u>

Deferred government assistance

Subordinated debt	9,201,208	9,292,430
Minority interest	20,000,000	20,000,000
	<u>965,595</u>	<u>965,595</u>

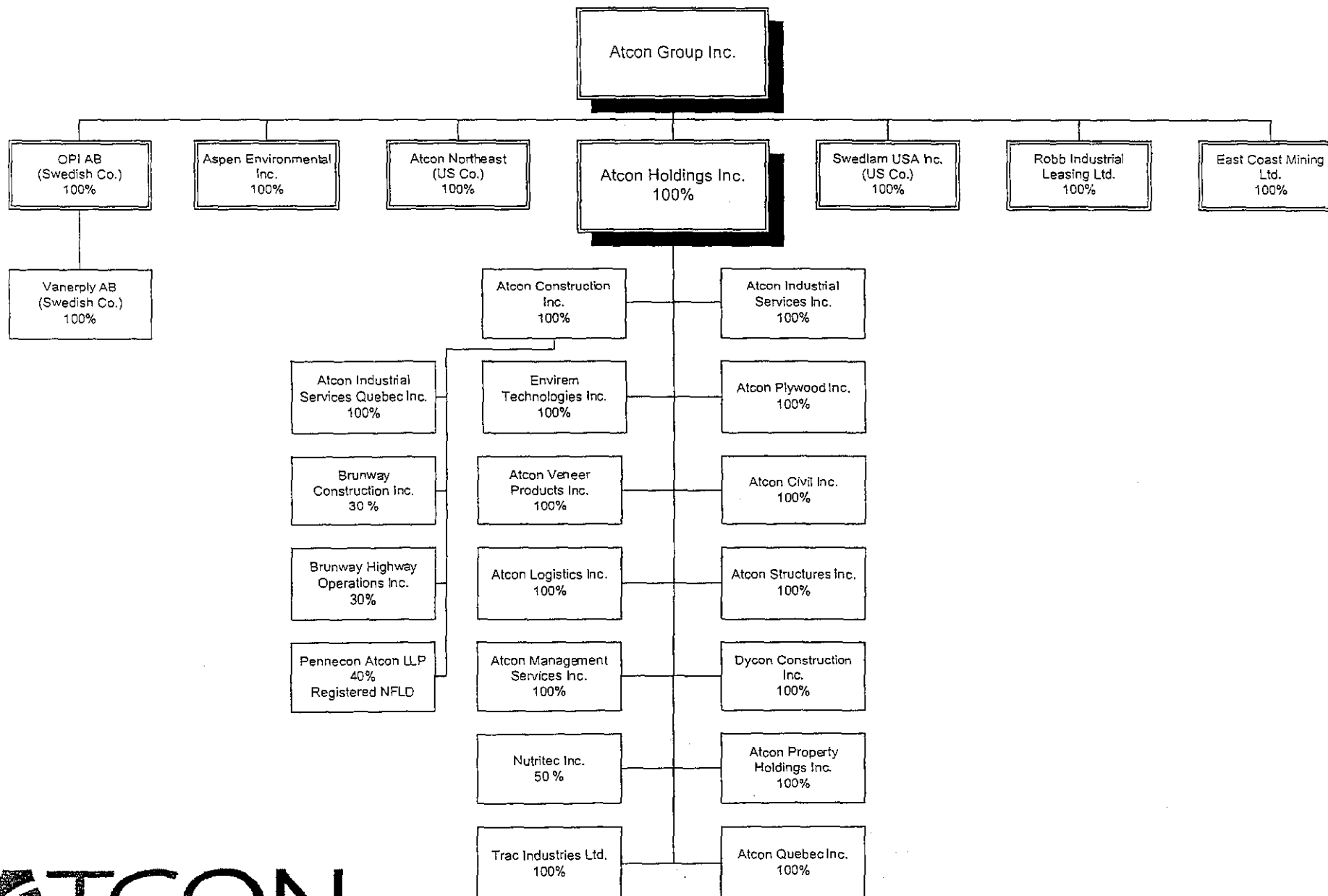
Shareholder's equity

Capital stock	564,115	584,115
Retained earnings	30,525,375	34,844,167
	<u>31,089,490</u>	<u>35,408,282</u>

	<u>\$ 191,247,499</u>	<u>\$ 201,872,519</u>
--	-----------------------	-----------------------

Atcon Holdings Inc.
Consolidated Statement of Cash Flows
Unaudited

	18 weeks ended June 6, 2009	5 weeks ended June 6, 2009
Cash derived from (applied to)		
Operations		
Net income	\$ (4,318,794)	\$ (2,015,327)
Depreciation	1,327,180	378,972
Loss on disposal of assets	(99,940)	(2,448)
Deferred finance charges	116,691	96,752
Future income taxes	(919,667)	(421,367)
	<u>(3,894,530)</u>	<u>(1,963,418)</u>
Change in		
Trade receivables	477,833	(2,461,314)
Holdbacks	8,625,972	(628,457)
Insurance receivable	(200,000)	-
Inventories	4,159,303	1,987,399
Income taxes receivable	(99,586)	-
Prepays	(1,730,403)	(1,177,591)
Accrued investment tax credits	(25,000)	-
Payables and accruals	(3,374,345)	3,949,336
Related party trade receivables and payables	(747,239)	1,376,471
Other liabilities	26,801	(2,073)
Income taxes payable	(822,229)	(295,794)
	<u>2,396,577</u>	<u>784,559</u>
Investing		
Purchase of		
Total property and equipment	(1,883,579)	(135,420)
Deferred costs	24,334	5,240
Investments	442,987	448,925
Proceeds from sale of assets	847,671	47,671
	<u>(568,587)</u>	<u>366,416</u>
Financing		
Proceeds from the issuance of long term debt	818,556	3,504
Repayment of long term debt	(1,188,233)	(288,706)
Increase in line of credit	(174,722)	(388,019)
Proceeds from issuance of common shares	(100)	-
Advances to parent company, net	(607,929)	(43,144)
	<u>(1,152,428)</u>	<u>(716,365)</u>
Net increase in cash	675,562	434,610
Cash (bank indebtedness)		
Beginning of period	(492,143)	(251,191)
End of year	<u>\$ 183,419</u>	<u>\$ 183,419</u>



- Schedule "E"

ATCON

ADVICE TO THE MINISTER

NEW BRUNSWICK INDUSTRIAL DEVELOPMENT BOARD

MINUTES

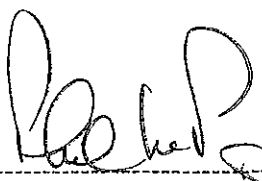
A regular meeting of the New Brunswick Industrial Development Board was held on Monday, August 10, 2009 at 3:30 p.m.

Those members present were: Byron James (Chairperson)
Phil LePage (by phone)
Tom Reid
Bill Levesque
Jim McKay
Michel Albert (for Yvon Belliveau)
John Rosengren (for Sadie Perron)


With a quorum of members present, the meeting was declared properly constituted. The meeting was chaired by Byron James with secretary support provided by Chris Sheehan. The agenda for the present meeting was approved as presented.

.....

COMPANY	Atcon Group
Location:	Miramichi, NB
Employment:	Present: 380 (Atcon Group)
Nature of Business:	Heavy metal manufacturing, machining and fabrication, plywood manufacturing and construction.
Request from the Company:	To allow prior charge on our security in the amount of \$3 million in favour of the bank and divert \$2 million of our remaining building loan proceeds towards working capital.
Financial Officer:	Joe Allen
Departmental Recommendation:	Rejection.
Board Recommendation:	The Members of the Board concurred with the Departmental Recommendation.


CHAIRPERSON


SECRETARY

Exhibit #76
December 8, 2010

Blackwell Court Reporting

8P
R
LB

76


COMPANY

Location:

Employment:

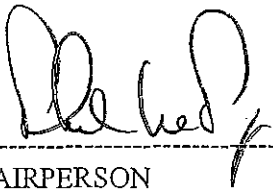
Nature of Business:

Request from the Company:

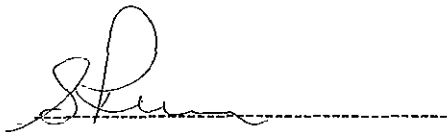
Financial Officer:

Departmental Recommendation:

Board Recommendation:



CHAIRPERSON



SECRETARY

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Tuesday, August 11, 2009 9:35 AM
To: Perron, Sadie (BNB/ENB)
Cc: Rosengren, John (BNB/ENB); Fontaine, Bernie (BNB/ENB); Allen, Joe (BNB/ENB)
Subject: FW: Atcon Plywood

Importance: High

fyi

From: Rutherford, Bruce (GE Comm Fin) [<mailto:bruce.rutherford@ge.com>]
Sent: Monday, August 10, 2009 2:32 PM
To: Watt, John (BNB/ENB)
Subject: Atcon Plywood
Importance: High

John,

FYI.

I know we report quarterly, however, we have been advised by the client all payments for the Atcon Group have been stopped. As such, this month's payment will most likely be in default. This may be an imminent default situation. I will keep you apprised of the situation.

A. Bruce Rutherford
Senior Manager, Atlantic Canada
GE Capital Solutions

P: (902) 468-8268
F: (902) 468-8270
C: (902) 229-1715
D: *439-8268
bruce.rutherford@ge.com
www.gecapitalsolutions.ca

Suite 204,
239 Brownlow Avenue,
Dartmouth, Nova Scotia, B3B 2B2, Canada
GE Canada Equipment Financing G.P.

GE imagination at work

Ex 76A Dec 21/10
PB

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Tuesday, August 11, 2009 11:24 AM
To: 'kdonovan@atcogroup.com'
Subject: I'm back

Are you available to meet me at 3:00 – 3:30 on Wednesday? (your office)

John

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Wednesday, August 12, 2009 8:45 AM
To: Allen, Joe (BNB/ENB)
Subject: FW: Briefing - ATCON
Attachments: graycol.gif; pic06177.gif; image001.gif; image002.gif

fyi

From: Ciaran Dooley [mailto:ciaran.dooley@scotiabank.com]
Sent: Wednesday, August 12, 2009 8:34 AM
To: Perron, Sadie (BNB/ENB)
Cc: Rosengren, John (BNB/ENB); Watt, John (BNB/ENB)
Subject: Re: Briefing - ATCON

Good Morning Sadie:

We met with the management team on Monday to discuss the various issues, in particular the lack of working capital. The Company has several key good jobs that they are either working on or have purchase orders in hand eg. Vale Inco, Shell Muskeg Removal, Michelin and Deh-Cho.

Critical matters at this time revolve around \$9mm payable to CCRA regarding non-payment of employee source deductions and HST, GE is threatening to repossess equipment needed for Vale Inco and Deh-Cho jobs. Collections of receivables is proving difficult, in particular on the Suncor job \$12mm, CNRL \$5mm and Deh-Cho \$4mm.

E&Y have stepped up their monitoring activity and are assisting the Company put together a comprehensive Business Plan with detailed cash-flow projections. The Company, along with E&Y have rescheduled a meeting with CCRA to August 19 at which time the BP will be presented including a proposal to pay CCRA. E&Y will use their contacts within CCRA to assist in obtaining consent to the payment plan.

The Company has received a LOI for Envirem for approximately \$5.5mm. A LOI was issued by the Company to SNC for sale of Brunway @ \$9mm. Also there appears to be renewed interest in Vanderply by a couple of companies that looked at it last year. We have asked E&Y to review these assets and assist the Company in establishing current valuations and potentially in sale negotiations.

We now believe the Borrowing base is virtually Nil. In order to maintain continued Bank support with working capital, it is imperative that PNB release some security, eg Brunway to the Bank to allow for immediate working capital needs to be met and part of the borrowing base shortfall be covered.

If you require additional information or wish to discuss further, please feel free to call me at either (902) 4210-3561 or (902) 401-9436.

Best regards,

Ciarán R. Dooley
Bank of Nova Scotia
Director-Commercial Banking
1709 Hollis Street, PO Box 70
Halifax, NS B3J 2M1
Office: (902) 420-3561
Cell: (902) 401-9436
Fax: (902) 420-6108
Email: ciaran.dooley@scotiabank.com

"Perron, Sadie (BNB/ENB)" <Sadie.Perron@gnb.ca>

**"Perron, Sadie
(BNB/ENB)"
<Sadie.Perron@gnb.ca>**

08/10/2009 08:58 AM

To "Ciaran Dooley" <ciaran.dooley@scotiabank.com>

cc "Rosengren, John (BNB/ENB)" <john.rosengren@gnb.ca>,
"Watt, John (BNB/ENB)" <John.Watt@gnb.ca>

Subject: Briefing - ATCON

Hi Claran,

BNB has important briefings tomorrow morning at 8h00 in preparation for our meetings on Thursday. It would be most helpful for us to get an update from you after your meetings today with the company.

I would like to touch base with you after your meetings. What would be a good time?

Thanks.

Sadie

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MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Monday, August 17, 2009 8:39 AM
To: Perron, Sadie (BNB/ENB); Rosengren, John (BNB/ENB)
Cc: Fontaine, Bernie (BNB/ENB)
Subject: FW: Atcon
Attachments: graycol.gif; pic13646.gif; image003.gif; image004.gif

I intend to advise BNS that the BCI shares can be released.

If you disagree, please let me know by 10:00 am

This does not affect the highway maintenance agreement which Atcon is attempting to sell to SNC.

John

From: Katrina Donovan [mailto:kdonovan@atcongroup.com]
Sent: Saturday, August 15, 2009 9:46 AM
To: Watt, John (BNB/ENB)
Cc: mledwell@atcongroup.com; 'Patricia Davis'
Subject: FW: Atcon

The \$750K that we were forecasting to receive this week was the residual equity in Brunway Construction. Before SNC will make final payments we need to provide the original share certificates of BCI to them. These share certificates are being held in Trust for the Province. We need the Province's OK on release of these shares? What do we need to do to make this happen.

Please advise – thanks,

Katrina

From: Patricia Davis [mailto:patricia.davis@scotiabank.com]
Sent: Friday, August 14, 2009 9:50 AM
To: mledwell@atcongroup.com
Cc: ciaran.dooley@scotiabank.com; 'Katrina Donovan'
Subject: Re: Atcon

Hi Mark,

I believe this is part of the security previously held by the sub-debt lenders, now held in support of the loan guaranteed by the Province of New Brunswick. We are only holding on behalf of PNB; you will require their authorization for the release of this security. Have you discussed with John Watt or anyone else at PNB?

Patti

Patti Davis
Deputy Director, Credit Solutions
Atlantic Credit Solutions Group
Halifax Commercial Banking Centre
4th Floor, 1709 Hollis Street, Halifax, NS

B3J 2M1

email: patricia.davis@scotiabank.com

Phone (902) 420-6167

Fax (902) 425-8100

"Mark Ledwell" <mledwell@atcongroup.com>

"Mark Ledwell"

<mledwell@atcongroup.com>

To <ciaran.dooley@scotiabank.com>

08/14/2009 09:28 AM

cc "Patricia Davis" <patricia.davis@scotiabank.com>,

"Katrina Donovan" <kdonovan@atcongroup.com>

Please respond to

<mledwell@atcongroup.com>

Subject Atcon

Ciaran,

We have arranged to sell the balance of our shares in Brunway Construction Inc. to Brunway (purchase for cancellation) in lieu of a dividend payment. The amount, approximately \$750,000, is expected to be in our account today. SNC Lavalin requested this structure to clean up Brunway Construction and there is no downside to Atcon from a tax perspective. To complete the transaction Atcon is required to deliver the original share certificate for the Brunway Construction shares (30 common shares representing 30% interest held by Atcon Construction Inc.) to Brunway Construction. The share certificate is currently being held in escrow by Stewart McKelvey for the Bank as part of its security for the recent loan transaction. We are requesting the Bank's consent to authorize release of the shares to us on the condition that they are delivered to Brunway and the proceeds released/paid directly to Atcon's account with the Bank. The proceeds represent Atcon's final share of Brunway Construction. The consent does not effect the Brunway Highway Operations Inc. shares in any way. If you need to discuss, please let me know. I am out of the office today---but available.

Regards,

Mark

Mark Ledwell

VP Operations & General Counsel

Atcon Group

626 Newcastle Blvd.

Miramichi, NB

Canada E1V 2L3

mledwell@atcongroup.com

off 506-627-1222

cel 506-623-8860

fax 506-627-1336

www.atcongroup.com

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MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Monday, August 17, 2009 9:24 AM
To: 'kdonovan@atcongroup.com'
Subject: RE: Atcon
Attachments: image003.gif; image004.gif; image005.gif

Call me please

John

From: Katrina Donovan [mailto:kdonovan@atcongroup.com]
Sent: Saturday, August 15, 2009 9:46 AM
To: Watt, John (BNB/ENB)
Cc: mledwell@atcongroup.com; 'Patricia Davis'
Subject: FW: Atcon

The \$750K that we were forecasting to receive this week was the residual equity in Brunway Construction. Before SNC will make final payments we need to provide the original share certificates of BCI to them. These share certificates are being held in Trust for the Province. We need the Province's OK on release of these shares? What do we need to do to make this happen.

Please advise – thanks,

Katrina

From: Patricia Davis [mailto:patricia.davis@scotiabank.com]
Sent: Friday, August 14, 2009 9:50 AM
To: mledwell@atcongroup.com
Cc: ciaran.dooley@scotiabank.com; 'Katrina Donovan'
Subject: Re: Atcon

Hi Mark,

I believe this is part of the security previously held by the sub-debt lenders, now held in support of the loan guaranteed by the Province of New Brunswick. We are only holding on behalf of PNB; you will require their authorization for the release of this security. Have you discussed with John Watt or anyone else at PNB?

Patti

Patti Davis
Deputy Director, Credit Solutions
Atlantic Credit Solutions Group
Halifax Commercial Banking Centre
4th Floor, 1709 Hollis Street, Halifax, NS
B3J 2M1
email: patricia.davis@scotiabank.com
Phone (902) 420-6167
Fax (902) 425-8100

~ "Mark Ledwell" <mledwell@atcongroup.com>

"Mark Ledwell"
<mledwell@atcongroup.com>

To<ciaran.dooley@scotiabank.com>

08/14/2009 09:28 AM

cc""Patricia Davis"" <patricia.davis@scotiabank.com>,
""Katrina Donovan"" <kdonovan@atcongroup.com>

Please respond to
<mledwell@atcongroup.com>

SubjectAtcon

Ciaran,

We have arranged to sell the balance of our shares in Brunway Construction Inc. to Brunway (purchase for cancellation) in lieu of a dividend payment. The amount, approximately \$750,000, is expected to be in our account today. SNC Lavalin requested this structure to clean up Brunway Construction and there is no downside to Atcon from a tax perspective. To complete the transaction Atcon is required to deliver the original share certificate for the Brunway Construction shares (30 common shares representing 30% interest held by Atcon Construction Inc.) to Brunway Construction. The share certificate is currently being held in escrow by Stewart McKelvey for the Bank as part of its security for the recent loan transaction. We are requesting the Bank's consent to authorize release of the shares to us on the condition that they are delivered to Brunway and the proceeds released/paid directly to Atcon's account with the Bank. The proceeds represent Atcon's final share of Brunway Construction. The consent does not effect the Brunway Highway Operations Inc. shares in any way. If you need to discuss, please let me know. I am out of the office today---but available.

Regards,

Mark

Mark Ledwell
VP Operations & General Counsel

Atcon Group
626 Newcastle Blvd.
Miramichi, NB
Canada E1V 2L3
mledwell@atcongroup.com
off 506-627-1222
cel 506-623-8860
fax 506-627-1336

www.atcongroup.com

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MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Monday, August 17, 2009 12:13 PM
To: 'mledwell@atcongroup.com'
Cc: 'kdonovan@atcongroup.com'; 'patricia.davis@scotiabank.com'; LePage, Phil (BNB/ENB)
Subject: RE: \$750m SNC

PNB consents to the release of the BCI shares.

John

From: Mark Ledwell [mailto:mledwell@atcongroup.com]
Sent: Monday, August 17, 2009 11:58 AM
To: Katrina Donovan; Watt, John (BNB/ENB)
Cc: Mark Ledwell
Subject: Re: \$750m SNC

John

An email to Katrina or me will do

Mark

Sent via BlackBerry on the 1X network.

From: "Katrina Donovan"
Date: Mon, 17 Aug 2009 11:52:19 -0300
To: 'Watt, John (BNB/ENB)'<John.Watt@gnb.ca>
Subject: FW: \$750m SNC

Please advise – our legal counsel needs the PNB OK to release the shares to us so we can send to SNC.

From: Patricia Davis [mailto:patricia.davis@scotiabank.com]
Sent: Monday, August 17, 2009 11:09 AM
To: kdonovan@atcongroup.com
Cc: John.Watt@gnb.ca
Subject: \$750m SNC

Hi Katrina,

Further to our conversation, the funds are technically PNB's as it is their security. No adjustment will be made to your current loan limit as a result of the fall in of these funds.

Patti

Patti Davis
Deputy Director, Credit Solutions
Atlantic Credit Solutions Group
Halifax Commercial Banking Centre
4th Floor, 1709 Hollis Street, Halifax, NS

B3J 2M1

email: patricia.davis@scotiabank.com

Phone (902) 420-6167

Fax (902) 425-8100

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MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Monday, August 17, 2009 4:12 PM
To: 'Patricia Davis'
Cc: 'mledwell@atcongroup.com'; 'kdonovan@atcongroup.com'
Subject: RE: \$750m SNC
Attachments: image001.gif; image002.gif; image003.gif

Hi

I discussed this at length with the Deputy and the Minister, and they are both in agreement to release the Security.

If you need more, let me know and we can provide it.

John

From: Patricia Davis [mailto:patricia.davis@scotiabank.com]
Sent: Monday, August 17, 2009 3:39 PM
To: Watt, John (BNB/ENB)
Cc: kdonovan@atcongroup.com; mledwell@atcongroup.com; LePage, Phil (BNB/ENB)
Subject: RE: \$750m SNC

Hi John - I have a call in to our legal re: who's signature is required to release. I assume we will need the minister to sign this off however I may be incorrect. so am just waiting to confirm.

Patti

Patti Davis
Deputy Director, Credit Solutions
Atlantic Credit Solutions Group
Halifax Commercial Banking Centre
4th Floor, 1709 Hollis Street, Halifax, NS
B3J 2M1
email: patricia.davis@scotiabank.com
Phone (902) 420-6167
Fax (902) 425-8100
"Watt, John (BNB/ENB)" <John.Watt@gnb.ca>

"Watt, John
(BNB/ENB)"
<John.Watt@gnb.ca>

08/17/2009 12:12 PM

To<mledwell@atcongroup.com>

cc<kdonovan@atcongroup.com>,
<patricia.davis@scotiabank.com>, "LePage, Phil (BNB/ENB)"
<Phil.LePage@gnb.ca>

SubjectRE: \$750m SNC

PNB consents to the release of the BCI shares.

John

From: Mark Ledwell [<mailto:mledwell@atcogroup.com>]
Sent: Monday, August 17, 2009 11:58 AM
To: Katrina Donovan; Watt, John (BNB/ENB)
Cc: Mark Ledwell
Subject: Re: \$750m SNC

John

An email to Katrina or me will do

Mark

Sent via BlackBerry on the 1X network.

From: "Katrina Donovan"
Date: Mon, 17 Aug 2009 11:52:19 -0300
To: 'Watt, John \ (BNB/ENB\)' <John.Watt@gnb.ca>
Subject: FW: \$750m SNC

Please advise – our legal counsel needs the PNB OK to release the shares to us so we can send to SNC.

From: Patricia Davis [<mailto:patricia.davis@scotiabank.com>]
Sent: Monday, August 17, 2009 11:09 AM
To: kdonovan@atcogroup.com
Cc: John.Watt@gnb.ca
Subject: \$750m SNC

Hi Katrina,

Further to our conversation, the funds are technically PNB's as it is their security. No adjustment will be made to your current loan limit as a result of the fall in of these funds.

Patti

Patti Davis
Deputy Director, Credit Solutions
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MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Monday, August 17, 2009 4:13 PM
To: 'kdonovan@atcogroup.com'
Subject: E&Y

Report?

MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Tuesday, August 18, 2009 2:04 PM
To: 'kdonovan@atcongroup.com'
Cc: Perron, Sadie (BNB/ENB)
Subject: RE: Plan

10:00 am, if that works for you. Sadie will be there.

We would like to have a draft of the plan in advance in order to understand it before the discussion.

John

From: Katrina Donovan [<mailto:kdonovan@atcongroup.com>]
Sent: Tuesday, August 18, 2009 2:00 PM
To: Watt, John (BNB/ENB)
Subject: Plan

Plan is to move the presentation to Cabinet out to next week and meet with BNB on Friday morning to review the plan/ask of BNB. Please let me know what time works for you

Thanks,
Katrina

Katrina Donovan, CA, CBV
VP Finance and Administration - CFO
Atcon Group
626 Newcastle Blvd., Miramichi, New Brunswick
Ph: 506-627-1222 Fx: 506-627-1676
Email: kdonovan@atcongroup.com

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MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Tuesday, August 18, 2009 2:07 PM
To: LePage, Phil (BNB/ENB)
Cc: Rosengren, John (BNB/ENB); Allen, Joe (BNB/ENB); Fontaine, Bernie (BNB/ENB)
Subject: FW: Plan

FYI

You may wish to inform the Minister and the Premier.

Under the circumstances, there is nothing new to brief Cabinet on tomorrow.

John

From: Watt, John (BNB/ENB)
Sent: Tuesday, August 18, 2009 2:04 PM
To: 'kdonovan@atcongroup.com'
Cc: Perron, Sadie (BNB/ENB)
Subject: RE: Plan

10:00 am, if that works for you. Sadie will be there.

We would like to have a draft of the plan in advance in order to understand it before the discussion.

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From: Katrina Donovan [<mailto:kdonovan@atcongroup.com>]
Sent: Tuesday, August 18, 2009 2:00 PM
To: Watt, John (BNB/ENB)
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Thanks,
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Katrina Donovan, CA, CBV
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MacDonald, Chantal (BNB/ENB)

From: Watt, John (BNB/ENB)
Sent: Tuesday, August 18, 2009 2:33 PM
To: 'Patricia Davis'
Cc: 'Ciaran Dooley'
Subject: Atcon

I just wanted to confirm that you are ok with taking the Atcon file to Cabinet next week rather than this week in order to give us both time to digest the new plan.

John

Atcon Holdings Inc.


Preliminary Restructuring Plan

XX August 2009

DRAFT

Exhibit #78

December 8, 2010


Blackwell Court Reporting

78



Background

The Atcon Construction Group ("Atcon or the "Company") has been an outstanding New Brunswick success story since 1978 when Robbie Tozer started what has become the largest employer in Miramichi - recently employing over 1,800 New Brunswickers with a payroll of \$70 million.

Over the years, Atcon grew its annual revenues to approximately \$255 million by expanding its service offerings and geographic marketplace. Unfortunately, the recent economic depression and global credit crunch, losses on certain contracts which arose for a variety of reasons, and straying into areas of construction outside of the Company's core competencies, have caused a significant decline in profitability and cash flow in recent years.

Atcon's continued existence requires a significant and immediate re-focusing of management's efforts and the Company's resources into areas directly linked with its core competencies. Management is committed to this return to these core competencies and this high-level Preliminary Restructuring Plan (the "Plan") provides an overview of Atcon's new vision for its future operations and success. It describes the critical path Atcon will follow to achieve that success – not only for itself - but for all of its stakeholders who rely on it in so many ways.

The Plan has been prepared for the preliminary consideration of two of Atcon's most significant stakeholders: the Province of New Brunswick ("PNB") and The Bank of Nova Scotia ("BNS"). If the conceptual approach outlined in the Plan is acceptable to PNB and BNS, then Atcon will prepare a more detailed plan to guide its implementation and enable PNB and BNS to monitor its progress on a weekly basis.

We have presented the details of our Preliminary Restructuring Plan below under the following headings:

- ▶ Governance
- ▶ New Operational Focus
- ▶ Non-Core Operations
- ▶ Cash Flow Projections
- ▶ Proposed Capital Restructuring
- ▶ Summary

We have assumed readers of this report are fairly knowledgeable about Atcon, its operations and its recent financial history and consequently we have kept our commentary herein concise.

Governance

The Company is in the process of implementing the independent advisory board in accordance with the terms of its recent refinancing (the "Advisory Board"). To date, two individuals have agreed to sit as Advisory Board members. They are:

- ▶ Donald Cameron – Former Premier of Nova Scotia; and
- ▶ John Puckering – Former Senior Vice President of Canadian Natural Resources Limited

Management is hoping to fill the remaining two Advisory Board seats in early September 2009 and to have the first board meeting in mid-September 2009.

The future strategic direction of Atcon described throughout this Plan will benefit from the high level guidance to be provided by the Advisory Board and management will fully support and cooperate with this board. In addition, the operational changes described throughout this Plan enable Atcon to flatten its management structure by eliminating a level of management making operations more efficient and cost effective.

New Operational Focus

Atcon will immediately narrow its operational focus to its core competencies since 1978, i.e., heavy civil construction in Atcon Construction Inc. and steel fabrication in Atcon Industrial Services Inc. Aggregate revenue levels are targeted to be approximately \$110 million producing gross margins of approximately 12% - 18% in the following business segments (the "Core Business Segments"):

- ▶ Atcon Construction Inc.
 - ▶ Earthworks
 - ▶ Concrete
 - ▶ Structures (i.e., Bridges)
- ▶ Atcon Industrial Services Inc.
 - ▶ Crushers
 - ▶ Heavy Structural Steel
 - ▶ Steel Bridges
 - ▶ Miscellaneous Fabrication

The Core Business Segments are characterized by higher margin and lower risk work (e.g., less labour intensive). The Company's target marketplace will be all of Canada especially remote areas where the higher margins are more readily achievable. A flatter management structure will ensure cost savings because fewer managers will be needed for the types of work conducted in the Core Business Segments.

We have commented on each of the Core Business Segments below:

Atcon Construction Inc.

Over the past 4 years Atcon varied from its core construction business into mechanical type projects in the Alberta Oil Sands region such as steel tank construction on a fixed price basis, pipe installation, steel erection, mechanical installation, etc. From a cash flow and profitability standpoint, these projects have not been successful for Atcon. Therefore, Atcon will change its focus to concentrate on its core business model of Earthworks, Concrete and Structures with annual sales shrinking to approximately \$75 million annually and Atcon's overhead structure reducing accordingly. Margins in these types of projects over the years have been strong for Atcon, ranging from 10% – 30%.

In the Earthworks segment, Atcon will concentrate on:

- ▶ Road construction for remote and industrial sites;
- ▶ Site works including mass excavation on industrial sites such as Alberta's Oil Sands, mining sites such as Vale Inco's Newfoundland smelter and power plants; and
- ▶ Muskeg removal projects in Western Canada.

In the Concrete segment, Atcon's focus will be on industrial sites such as the Shell Thickeners site we recently completed, and foundations at Vale Inco's smelter in Newfoundland, etc. These have been very good margin projects in the past and we see this continuing.

The Structures segment will primarily comprise construction of steel and or concrete bridges. This has been a core business for Atcon for 30 years and will continue to be in the future. The margin in this business has been steady for many years and over dozens of structures we have averaged 12% – 15% margins.

Atcon Industrial Services Inc.

The fabrication business will allow Atcon to do its traditional fabrication work and to bid on projects requiring assembly of large modular components which has recently become a requirement of large customers. It is expected to have approximately \$35 million of annual sales. Projects in this line of business can support a 12% – 15% margin and are quite consistent in nature.

Fabrication main clients will include Michelin, Metso and Departments of Transportation ("DOT") across Canada, all of which have solid credit ratings. Most fabrication projects have a mobilization fee and pay for material within 30 days of arrival, matching suppliers' payment terms. Consequently, bank line of credit requirements will be relatively low.

Non-Core Operations

The change of operational focus described above means significant changes will occur with respect to many of the companies or divisions in the Atcon group. We have provided below a brief description of some of the more significant low margin, loss producing or non-core business segments (the "Non-Core Operations") that will be discontinued and immediately placed on the market for sale through formal sales processes. The sale of these Non-Core Operations will immediately reduce the strain on daily cash flow and each sale will provide much needed funds to improve the Company's working capital deficiency. Management is not projecting any of these sales to conclude prior to 30 January 2010 (i.e., the time frame covered by the cash flow projections discussed below) due to the time it takes to maximize value by properly preparing for, marketing and executing such sale transactions. Nevertheless it is possible that certain of them may close prior to that date.

The most significant Non-Core Operations are:

- ▶ Atcon Construction Inc. – the following business segments will be discontinued:
 - ▶ Tanks
 - ▶ Underground Piping
 - ▶ Steel Erection
 - ▶ Buildings
- ▶ Atcon Industrial Services Inc. – the following business segment will be discontinued:
 - ▶ Machining – the machine shop and related equipment will be sold. Estimated net realizable value of \$2.0 million
- ▶ Envirem Technologies Inc. – this business will be sold. Estimated net realizable value of \$7.0 million has not been included in the Projection due to the difficulty of projecting with accuracy the time it takes to close a transaction. Management is focusing on this sale as it has already received preliminary expressions of interest from two parties and expects to approach other parties shortly. It is possible this sale may be completed prior to 30 January 2010 in which case the net sale proceeds would be available to address certain immediate cash needs of the Company.
- ▶ Brunway Highway Operations ("Brunway") – this will be sold. Estimated net realizable value of \$7.5 million. It is possible this sale may be completed prior to 30 January 2010.
- ▶ Quarry and related equipment – this quarry leasehold interest and equipment will be sold. Estimated net realizable value of \$3.0 million.
- ▶ Atcon Plywood Inc. – the secured debt of this company exceeds the estimated market value of its assets (i.e., a plywood manufacturing plant). Atcon will immediately cease making payments of principal and interest on the secured debt

and will only pay minimal preservation costs until such time as the secured creditors take possession of their security. Estimated net realizable value of nil.

- ▶ Vanerply AB (Swedish plywood facility) ("Vanerply") – this plant will be sold. Estimated net realizable value of \$25 million.
- ▶ Plane – the plane will be sold. Its use has been discontinued and it has been grounded pending improved market conditions. The current market value of the plane is significantly less than the debt outstanding against it. Estimated net realizable value of nil.
- ▶ Excess capital assets – in addition to the operations listed above, excess construction or other equipment not needed to support core operations will be sold. Estimated net realizable value of \$1.0 million

In addition to the above-noted changes, management sold Atcon Veneer Products Inc. on 27 February 2009 for \$0.5 million cash and a \$0.3 million eight year note with payments starting in 2011.

Atcon's current organizational structure is shown at Exhibit A. The organizational structure after implementation of the above-noted organizational changes is shown at Exhibit B.

We have provided below a discussion of Atcon's weekly operational cash flow projections for the period 15 August 2009 to 30 January 2010 and the expected cash flow effects of any of the above-noted organizational changes not expected to take effect until after 30 January 2010.

Cash Flow Projections

Management has prepared cash flow projections (the "Projections") for the Core Business Segments and Envirem for the period 15 August 2009 through 30 January 2010 (the "Period"). The Projections reflect management's best estimate of the anticipated results of the Core Business Segments and of various operational changes designed to limit corporate spending to levels commensurate with current business activity. They have been prepared on a divisional and consolidated basis and include current and or reasonably anticipated levels of contract work. A summary of the key assumptions used in developing the Projections and commentary on the cash flow impact in each division over the Period is provided below.

Consolidated Cash Flow

The consolidated Atcon Group Projection attached as Exhibit C indicates the BNS operating line of credit balance (the "BNS Line") as at the start of the Period, i.e., 15 August 2009, is \$29.1 million. The BNS Line is anticipated to increase and peak at \$38.5 million during the week of 12 December 2009 but reduce to \$25.0 million as at the end of the Period, i.e., 30 January 2010.

The key assumptions driving the BNS Line fluctuations through December 12, 2009 (the projected peak period) are attributable to the following items:

- ▶ Payments of arrears to Canada Revenue Agency ("CRA") of \$1.6 million;
- ▶ Receipt of final \$2.0 million instalment of the \$10 million June 2009 refinancing;
- ▶ Net cash outflows of \$4.4 million from general operations primarily attributable to the high margin Muskeg removal contract;
- ▶ Capital expenditures of \$1.3 million for the construction of the new Fabrication facility;
- ▶ Contingency allowances of \$0.8 million to provide for unexpected expenses;
- ▶ Payments of \$2.3 million against accounts payable obligations outstanding as at the start of the Period; and
- ▶ Interest payable to BNS of \$1.1 million.

The cash outflows described above do not include equipment leasing obligations of \$3.3 million otherwise payable during the Period in respect of presently unused equipment which the Company is deferring in order to improve the overall net cash position of the Company while selling these unused assets.

Most of the significant cash outflows described occur in advance of the receipt of the related account receivable or do have not future cash receipts associated with them. This causes the BNS Line to reach its maximum projected limit at 12 December 2009. Thereafter, the receipt during the remainder of the Period of significant current and old accounts receivables and the reduced spending associated with the operational restructuring changes are projected to bring the BNS Line down to \$25.0 million as at the Period end.

We have provided additional commentary below on some of the more significant cash flow matters affecting the Projection.

Leasing Strategy

Atcon has significant operating lease obligations for machinery and equipment payable to various equipment financiers. In the normal course, lease payments totalling \$14.1 million would be due and payable in the Period after taking into account the reduced lease payment schedule previously negotiated with Caterpillar Financial ("Caterpillar") in July 2009. As noted in Exhibit C, leasing obligations have been segregated into two categories, i.e., leases tied to working equipment; and leases specific to idle equipment.

The Company has determined it must immediately negotiate payment relief from GE Capital, Royal Bank Leasing and DeLage Financial Capital. For the purpose of the Projection, management has assumed all lease payments to these financiers will be deferred for a three month period effective immediately in respect of which it is seeking written agreements. This is projected to save the Company \$3.3 million over the Period. Thereafter, equipment lease payments will resume, but only for those assets that are required to support current business activity. Management has formed a team of six knowledgeable employees who will immediately seek to sell all non-essential leased equipment in order to minimize future lease payment obligations.

4.8
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3.1

Accounts Payable Arrears

Accounts payable as at 15 August 2009 totalled \$36.0 million of which \$3.1 million was payable to CRA, \$6.7 million was payable to LCLL, and \$9.2 million was directly linked to specific projects which will be paid upon receipt of the specific project accounts receivable owing to the Company. Approximately 20% of the remaining accounts payable of \$17.0 million will be paid during the Period as required based on pressure from these creditors. The balance remaining unpaid at the end of the Period will be addressed in the post-30 January 2010 cash flow projection the Company will prepare. Operating requirements during the Period are anticipated to be funded primarily on cash on delivery (COD) basis.

CRA

The Company is indebted to CRA for unpaid source deductions and HST remittances of approximately \$3.1 million. The outstanding arrears owing to CRA are projected to be paid by the Construction division throughout the Period in five instalments as follows:

▶ 5 September 2009	\$400,000
▶ 3 October 2009	\$400,000
▶ 31 October 2009	\$400,000
▶ 5 December 2009	\$400,000
▶ 2 January 2010	\$400,000
▶ 30 January 2010	\$1,100,000

Management intends to pay all current payroll and HST obligations on a current basis during the Period. Management met with CRA on 19 August 2009 at which time CRA indicated it was agreeable to the foregoing payment proposal subject to ongoing close monitoring of Atcon's compliance with the payment of the current remittances and the arrears. In addition, CRA has requested that the Company offer security to CRA in support of its liabilities to CRA.

The Company is also indebted to Ledwell Construction Labour Limited ("LCLL") for \$6.7 million in respect of underpayments on invoices for labour services provided by LCLL to Atcon Construction (the "LCLL Arrears"). This balance is projected to be outstanding as at 30 January 2010. LCLL is indebted to CRA for \$6.7 million in respect of unpaid source deductions and HST arrears before any penalties or interest that may be assessed. The Company's obligation to LCLL may be reduced by any amounts LCLL receives from construction liens it filed on 18 August 2009 against the CNRL project in respect of which it provided labour to Atcon. These liens total \$6.0 million and only actual cash recoveries these liens will be incorporated into the Company's plan to pay the LCLL Arrears.

CRA is pressing both LCLL and Atcon for payment of this account. Atcon intends to pay the LCLL Arrears from net proceeds generated on various asset sales anticipated to take place post 30 January 2010 unless it can negotiate more favourable terms with CRA. In addition, Atcon also filed construction liens on 18 August 2009 against the CNRL project in the amounts of \$7.2 million and any recoveries from these liens will be used to pay the LCLL Arrears.

Contingency Provision

A contingency provision of \$1.0 million (i.e., \$45,000 weekly) has been included in the Projection to address unanticipated cost overruns which may arise during the Period.

Atcon Construction Inc. Cash Flow

The Construction division's ("Construction") cash flow for the Period is attached as Exhibit D. Construction will require an additional \$4.2 million to fund its operation up to 12 December 2009 after which time anticipated cumulative net collections of \$5.4 million from the Suncor, Deh Cho, Fermuse and Wuskwatin receivables outstanding at the start of the Period, and \$11.3 million from the Muskeg contract work done during the Period, are budgeted to be collected. In total, Construction is anticipated to produce a net cash improvement of \$11.8 million over the Period. In addition, the Company projects to have an outstanding account receivable from the muskeg contract of \$8.5 million as at 30 January 2010. This amount is projected to be collected before the end of February 2010.

A brief summary of the main assumptions underlying Exhibit D are described below:

Eastern Paving – Eastern Paving projects are anticipated to continue through the month of September 2009 for the DOT New Brunswick and Brunway. Eastern paving contracts have historically been profitable (6% DOT and 12% Brunway) and short term in nature. Management does not anticipate any collection issues or claims against the current contract work. It is assumed that all Eastern Paving accounts receivable, including final project holdbacks, will be collected on or before 31 October 2009.

Western Paving – The Company has been engaged by Shell to complete a three week paving project in Western Canada at a total contract price of \$2.7 million. The project will consume existing inventories of aggregate and liquid asphalt thereby improving the net cash contribution from the project. This Shell project requires cash outflows of \$2.1 million during the month of September to generate \$2.7 million of cash receipts, which are scheduled to be received on or before October 24, 2009.

Deh Cho Bridge – The Deh Cho accounts receivable balance as at 15 August 2009 is \$8.0 million inclusive of \$3.8 million of holdback receivables which Deh Cho Corporation acknowledges are owing and will be paid at the end of the current construction season (included in the week of 19 December 2009 in the Projection); approximately \$0.6 million for approved monthly camp billings and approved fabrication work is budgeted for collection in the week ended 5 September 2009; and \$3.6 million of billings which are disputed. The major components of the disputed billings are:

- ▶ \$1.5 million - as a result of Deh Cho's delays with fabrication plans, the Atcon's fabrication shop had to slow production and then catch up at the end of the period thereby incurring overtime and other inefficiencies as well as certain trucking (instead of rail) costs. These extra costs were billed but not accepted by Deh Cho. Deh Cho had agreed to be responsible for the incremental transport charges but are disputing the support for them and will not release payment until they agree with calculations;

- ▶ \$0.3 million – the contract requires camps to be made available and billed six months of the year. Production issues last year saw the camps stay open longer and the Company billed for an additional 2 months. The bill was denied because the contract provides strictly for six months of camp billings;
- ▶ \$0.7 million - when Deh Cho decided to remove earthwork from the fixed price contract and deal directly with Atcon's subcontractor, Atcon issued a bill for foregone profit. Deh Cho initially disputed this charge but agreed to it on 18 August 2009. This will be a \$0.7 million positive cash flow variance as this disputed item had conservatively not been included in the Projections; and
- ▶ \$0.3 million - this amount relates to two extra months of camp costs not provided for in the contract but which had to be incurred because of construction delays caused by Deh Cho. Management believes this dispute will be resolved over the next few weeks based a 18 August 2009 meeting with Deh Cho and collection has been budgeted for the week of 23 January 2010.
- ▶ \$1.0 million – this extra charge arose as a result of delays associated with the superstructure planning and the project in general resulting in the initial production schedule being modified from time to time by Deh Cho. These interim delays resulted in additional pressures being placed on Atcon to complete project components at a later time causing Atcon to incur overtime charges to meet the new schedules. These delays also resulted in changes to the transportation method selected to send the product to the NWT (trucking versus rail). Deh Cho agrees that additional billings are warranted, however, the calculations of the overage are subject to dispute. Management believes this dispute will be resolved over the next few weeks based a 18 August 2009 meeting with Deh Cho and collection has been budgeted for the week of 23 January 2010.

The Deh Cho contract is effectively on hold pending the re-design of the superstructure. Management has assumed that future progress billings during the Period will be limited to the monthly camp charges and to previously approved fabrication of pier bents. The Projection does not include any cash inflows from superstructure steel orders which may arise during the Period if the re-designed plans are finalized before the end of September. If the Company is able to order the superstructure steel during the Period under the current contract terms, a \$4.0 million positive cash inflow to Atcon could occur which has not been included in the Projection.

Kakisa – The Kakisa bridge project is expected to be completed at the end of September 2009. There are no identified issues associated with the contract and all billings including the holdback billing are anticipated to be collected prior to Period end.

Muskeg – The Muskeg removal contract with Shell Canada is in the second year of a three year term and work is scheduled to commence in November 2009. This is a unit price contract in which monthly billings are based on the volume of muskeg removed as supported by weigh scale reports. At the end of the contract, the site area is re-surveyed and a final billing adjustment is issued to reconcile weigh scale reports to the survey results. At the end of the first year, the billing adjustment was \$0.7 million (5% of first year's billings) in favour of the Company and a 38% actual net profit margin was generated. Similar net profit margins on \$30 million of project work are anticipated for the upcoming season which represents a significant source of profit and positive cash flow for the Company.

The first Shell Canada Muskeg progress billing for the upcoming season is projected to be collected in late December 2009. Although this contract is very profitable, the holding costs associated with the heavy machinery, mobilization costs associated with the project employees and operating costs (specifically payroll which is paid every two weeks) cumulatively account for \$5.0 million of cash outflows which must be funded prior to the first cash collection being received. This places significant pressure on the BNS Line.

Vale Inco -- The Vale Inco contract is a joint venture between Construction and Pennecon Construction. Construction supplies labour and equipment on a time and materials basis to the project which is billed and collected monthly. Construction, as a joint venture partner, is also entitled to receive a 45% share of the overall project profit, which is anticipated to be collected shortly after the Period end.

Cape Dyer -- The Cape Dyer contract is also a time and materials project which is nearing completion. All accounts receivable associated with this contract are expected to be fully collected by the first week of September 2009.

Other Significant Construction Assumptions

As noted above, Construction has outstanding accounts receivable owing on various completed projects where the final payment is being negotiated or arbitrated due to various project disputes, claims and extra billing submissions. The actual dates of these settlements are uncertain at this time. For the purpose of the Projection, management has conservatively assumed the final net settlements (cash receipts less project payables) for the following accounts will be received during the week of 30 January 2010:

Customer	(millions)			
	Book Value	Estimated Settlement	Accounts Payable	Net Settlement
Suncor	\$11.7	\$5.0	\$2.5	\$2.5
Wuskwatim	\$2.5	\$2.0	-	\$2.0
Fermuse	\$3.1	\$1.7	\$0.8	\$0.9

Fabrication Cash Flow

Attached as Exhibit H, is Atcon Industrial Services Inc.'s ("Fabrication") cash flow related to the construction of its new fabrication facility and from fabrication operations during the Period. Fabrication is projected to provide negative cash flow of \$1.2 million over the Period as follows:

Fabrication facility construction costs	(\$1.3 million)
Cash flow from operations	<u>\$0.1 million</u>
Net Cash Flow	<u>(\$1.2 million)</u>

Construction of New Fabrication Facility

The Company intends to spend \$1.3 million during the Period to complete the exterior construction of the new Fabrication building prior to the winter season. An additional \$2.4 million of capital spending will be required to complete the Fabrication facility after the Period and management plans to get these funds from one of the following sources:

- ▶ The Deh Cho contract accounts receivable collections - Once the superstructure re-design is confirmed, the Company will order superstructure steel. This is a significant and profitable billing event pursuant to the current contract; or
- ▶ An Export Development Corporation ("EDC") program that may enable the Company to rearrange its Deh Cho performance guarantee thereby potentially enabling the Company to access additional working capital.

Operations

Fabrication's four existing major projects are collectively cash flow neutral over the Period. In addition, the Projections include an assumption that currently unidentified work totalling \$2.0 million will be achieved during the Period. In the event this additional contract work is not sourced, cash disbursements will be limited accordingly. Additional commentary on these matters follows:

Deh Cho Bridge – Fabrication is a sub-contractor for Construction on the Deh Cho contract. Billings to Deh Cho during the Period are for fabrication work not associated with the superstructure. However, as previously indicated, there is an opportunity to significantly increase cash inflows in Fabrication when the steel for the superstructure is ordered. Once final design is received from Deh Cho, 30% of the contract value can be billed which will provide \$4.0 million of cash flow to Fabrication after the steel supplier has been paid.

Cadwell Ross – Fabrication is a subcontractor for Cadwell Ross on the Cogane Bridge project. The project is nearing completion and no material issues have been identified. Management anticipates that all the remaining project billings and holdback billings will be collected prior to the end of the Period.

PCS Potash – The Company was successful in securing a \$0.6 million contract on PCS Potash's major facility improvement project. Additional bids for fabrication contracts have been placed with PCS Potash but not specifically included in the cash flows because the contracts have not yet been awarded.

Michelin - Michelin has awarded the Company a purchase order to produce a \$5.9 million tire press. This is a long term project anticipated to take in excess of 12 months to complete. Payment terms associated with the contract are cash flow positive as progress billings are permitted in advance of work and materials being ordered. The Company has spoken to Michelin over the past week and there is a potential for a second press to be ordered in the near future. The second press will benefit from operational efficiencies and improved margins.

Other – As part of the restructuring process, management has identified certain finished goods inventory that will be aggressively marketed. Included in Exhibit E are inventory

sales totalling \$0.45 million from various crusher and belt screener sales that are anticipated to be completed during the Period.

Envirem Cash Flow

Envirem Technologies Inc.'s ("Envirem") cash flow for the Period attached as Exhibit F shows a \$1.7 million positive cash flow. This is primarily generated from accounts receivable collections of \$0.5 million associated with the bagging operation and continuing waste recovery and treatment activity.

The Envirem operation has the following three primary business segments and our comments on each are provided below:

- ▶ Waste recovery and treatment – ongoing operation
- ▶ Soil and mulch bagging – operations completed for 2009
- ▶ Quarry operations – operations deferred

Waste Recovery and Treatment - Cash flows from the waste recovery and treatment operation are projected to continue throughout the Period at historical billing levels of \$0.5 million per month.

Soil and Mulch Bagging - The soil and mulch bagging operation is seasonal in nature with the most product sales arising in the months of April – June. Historically, the bagging facility operated during the months of August and September to build inventory for the next sales season. Management's current plan is to defer such inventory build-up to a later date to reduce cash outflows during the Period. Consequently, the Envirem cash flows incorporate the remaining collections of the 2009 bagging operation from such customers as Walmart and Kent Building Supplies and minimal operating costs associated with the bagging operations as most have been deferred to the spring of 2010.

Quarry – Envirem has a long term contract with Cemex to crush and sell rock aggregate into the Florida market. The contract terms, while favourable over the term of the contract would provide limited and potentially negative cash flow to Envirem over the shorter time frame of the Period. Accordingly, and given Atcon's current financial situation, management has determined Atcon will not service the Cemex contract during the Period unless Cemex agrees to fully fund all operating costs in advance or project financing of \$2.0 million can be obtained prior to 1 September 2009. Consequently, management will communicate with Cemex to attempt to negotiate advance payments. If unsuccessful, management will try to mitigate any negative consequences of not fulfilling Envirem's obligations to Cemex in the short term and try to preserve the value of the contract for future years if possible.

Machining Division

The Machining Division ("Machining") of Atcon Industrial Services Inc. has historically fabricated smaller parts required by Fabrication in addition to servicing 3rd party customer contracts. Machining has not been profitable as a stand-alone operation for

an extended period of time. Management has determined it can no longer afford to finance the operational losses of Machining given the Atcon's consolidated financial situation. Accordingly, Machining will be closed immediately.

Attached as Exhibit G is Machining's cash flow reflecting the collection of its current contract receivables, wind-down costs through the end of September 2009 and base holding costs thereafter to preserve and maintain the facility until such time as the shop can be sold as a turn-key operation or, failing that, its equipment liquidated on a piece-meal basis. The Projections indicate \$0.2 million positive cash flow in Machining during the Period.

Other Divisions

A combined cash flow projection for all Atcon's entities and divisions not discussed above, i.e., Plywood, Management, Veneer, Logistics, and Holdings, is attached as Exhibit H. The general assumptions associated with these divisional cash flows are provided below:

Plywood - The Plywood manufacturing facility discontinued operations in March 2008. Cash outflows associated with the Plywood facility have approximated \$230,000 per month, approximately \$200,000 of which were lease and debt service costs payable to GE and BDC. Holding costs for security, minimal utilities and insurance to preserve and protect the facility account for the balance. The secured debt of this plant exceeds the estimated market value of the plant; consequently, Atcon will immediately cease making payments of principal and interest on the secured debt and will only pay the minimal preservation costs until such time as the secured creditors take possession of their security or until economic conditions improve.

Management and Administration - The Company has and continues to reduce its staffing levels to minimize cash outflows. In recent weeks a number of employees have been laid off in the Logistics, HR, Purchasing, and Administration divisions representing annual payroll savings of \$650,000. In addition, the Company has agreed to re-adjust its management compensation resulting in annual savings of \$0.5 million. These reductions are reflected in the cash flows on Exhibit H. Management and Administration payroll includes senior management, administration staff, and professionals at all divisions.

Cash receipts reported in Exhibit E relate to a management fee of \$0.5 million which is charged annually to Vanerply. The Vanerply receivable will be collected in ten weekly installments of \$50,000 commencing immediately.

Veneer - The Veneer facility was sold in February 2009 for \$0.8 million of which \$0.5 million has been received. The remaining balance of \$0.3 million is subject to a promissory note with repayment over eight years starting in February 2011. Early collection of the promissory note at full or a discounted value is not anticipated.

Logistics - The Logistic division's costs are directly associated with the corporate aircraft. Although the aircraft has been grounded and flight crew terminated, it costs approximately \$5,000 per month to secure and insure the aircraft. This is in addition to

the monthly lease cost of \$140,000 payable to GE, which for the purpose of the Projection, are assumed to be deferred until after the end of the Period. The aircraft will be secured and maintained in Montreal by a 3rd party provider who has been engaged to complete all maintenance requirements pursuant to the aircraft license and insurance provisions.

The estimated fair market value of the aircraft is \$6.5 million as a result of the current depressed economic climate and a surplus of such aircraft available for sale. Accordingly, although the Company ultimately intends to dispose of the aircraft, to do so in the near future would crystallize a net loss of approximately \$3.0 million and a default with GE in Construction. Accordingly, Management intends to minimize the holding costs associated with the aircraft and work with GE to develop a mutually agreeable resolution to address both parties' interests.

Holdings - The costs flowing through Holdings are corporate in nature and include interest payments to the Bank on the term and operating facilities of \$1.7 million over the Period, a contingency allowance of \$45,000 per week (\$1.0 million over the Period), and payments on accounts payable arrears of \$3.0 million, all of which have been discussed above. In addition, Holdings shows \$2.0 million of cash receipts from the 30 June 2009 financing were received during the week ended 15 August 2009.

Proposed Capital Restructuring

The Company, due to its size and nature, has many secured creditors, the two most significant and inter-related of which are PNB and BNS. We have focused our discussion in this section on those two creditors. The approach we propose to take with the other secured and most unsecured creditors has been described above in the Cash Flow Projections section.

In addition to its secured creditors, the Company presently owes LCLL \$6.7 million as discussed above. This balance is not projected to be paid during the Period due to the Company's shortage of working capital but Atcon's plan to deal with this liability is also discussed below.

Interim Financing Requirement

As shown in the Cash Flow Projections section above, the BNS operating line of credit (the "BNS Line") had a balance of \$29.1 million as at 15 August 2009 with a significant borrowing base deficiency, i.e., in excess of \$20.0 million. The BNS Line is projected to peak at \$38.5 million in December 2009 (i.e., a net increase of \$9.4 million from the 15 August 2009 balance) prior to declining to \$25.0 million at 30 January 2010. At that time, Atcon will still be significantly above the authorized borrowing base but will have profitable operations, positive operational cash flow and will start receiving the proceeds from the sale of Non-Core Operations, collection of the insurance settlement, etc.

In order for Atcon to continue to operate and to realize the proceeds of the sales of its Non-Core Operations, which sales are not anticipated to occur within the Period, it must have additional interim financing of \$9.4 million above current lending levels (the "Interim

Financing') and continued accommodation from BNS in respect of the existing \$20.0 million borrowing base deficiency.

Atcon does not have any unencumbered assets to offer to BNS to secure the Interim Financing and the funds from the Interim Financing will not immediately increase the Company's borrowing base. PNB has advised management it will not provide any cash advances to Atcon and management does not believe it can find a new lender to provide the Interim Financing. There is a possibility of replacing the PNB guaranteed \$13.3 million letter of credit in favour of Deh Cho with an EDC guarantee but it will require EDC approval and a few months at best to finalize. EDC will only provide such a guarantee if it enabled Atcon to use the \$13.3 million PNB guarantee to secure a new operating line of credit in the same amount.

As can be seen above, it appears BNS is the only party potentially willing to lend Atcon the Interim Financing. It is critical to Atcon's survival that BNS agrees to provide the Interim Financing by allowing it to increase the BNS Line a further unsecured \$9.4 million to a peak of \$38.5 million in December 2009 on the basis set-out below.

Agreement between PNB and BNS

As noted above, BNS already has significant exposure on the BNS Line, i.e., it had a \$20.0 million borrowing base deficiency as at 15 August 2009, yet Atcon must now ask BNS to increase this exposure by an additional \$9.4 million over the next four months by providing the urgently required Interim Financing. Most if not all of the Interim Financing will not be secured by qualified borrowing base assets and therefore will increase the BNS deficiency practically on a dollar for dollar basis until significant cash inflows are realized in the last two weeks of December 2009 and in January 2010.

In consideration of BNS providing the unsecured Interim Financing and allowing the BNS Line to peak at \$38.5 million, management is asking PNB for a conditional release, in favour of BNS, of PNB's security over the assets included in Non-Core Operations. This conditional release is necessary to mitigate the additional risk BNS will assume by providing the critically needed Interim Financing and the risk it now has and will continue to have by supporting the Company while there are ongoing defaults including the significant borrowing base deficiency. In particular, the Company is asking PNB to agree that:

- ▶ BNS will be entitled to the sale proceeds from the sale of all Non-Core Operations as they occur (e.g., Brunway, Vanerply, Envirem (including the quarry assets), the Machine Shop and all redundant equipment of Atcon, etc.) subject to the "PNB Security Reversion Right" which will provide that once the amount outstanding on the BNS Line has been reduced to less than the lesser of \$10.0 million or the amount of the borrowing base supporting the BNS Line, the proceeds of the sale of any Non-Core Operation would be used to pay down PNB guaranteed debt.

A condition precedent to aforementioned agreement to provide the conditional release of security to BNS would be that BNS and Atcon execute a forbearance agreement documenting the following:

- ▶ BNS's agreement not to enforce its security and not to appoint a receiver notwithstanding the Company's existing defaults under its lending agreements with BNS as long as Atcon complies with the terms and conditions of the forbearance agreement;
- ▶ That a condition precedent to BNS providing the Interim Financing is that the Company will have obtained written payment deferment agreements with GE, Caterpillar, Royal Bank, Delage, BDC and any other secured creditor to whom it will not be making payments as contractually required; and
- ▶ The Company's agreement to allow weekly monitoring of its adherence to:
 - ▶ The detailed terms of the Plan including implementation of its New Operational Focus, the sale of Non-Core Operations, etc;
 - ▶ Its credit agreements with BNS; and
 - ▶ The detailed terms of the forbearance agreement.

We have summarized below at a high level the status of certain key outstanding matters that Atcon will have to address after the end of the Period.

Post – 30 January 2010

Implementation of Atcon's New Operational Focus has already commenced. The rationalized operations will quickly produce profitable results and positive operating cash flows. This will enable the Company to realize the proceeds from the sales of Non-Core Operations and the collection of its insurance receivable which are expected to be received post 30 January 2009. Atcon will then be able to address a number of challenges that will be outstanding at the end of the Period. These include:

- ▶ BNS Line \$25.0 million - As at 30 January 2010, the BNS Line is projected to be at \$25.0 million with a significant borrowing base deficiency. BNS will have as security for the BNS Line the working capital assets; the insurance receivable; and, subject to the PNB Security Reversion Right, the Non-Core Operations. As noted above, the PNB Reversion Right will provide that once the amount outstanding on the BNS Line has been reduced to less than the lesser of \$10.0 million or the amount of the borrowing base supporting the BNS Line, the proceeds of the sale of these assets would be used to pay down PNB guaranteed debt; and
- ▶ LCLL Arrears \$6.7 million - Atcon proposes to pay the full amount of the LCLL Arrears from the net proceeds from the sale of the Non-Core Operations and the collection of the insurance claim receivable set-out in the table below unless it can negotiate more favourable terms satisfactory to CRA. It is difficult at this time to project with great certainty the exact amount and timing of these net proceeds but management will immediately commence formal sales processes in respect of the Non-Core Operations.

- Sale of Non-Core Operations - We have provided below a summary of management's best estimate of the anticipated security value of the Non-Core Operations and the insurance receivable and how management is proposing to allocate this value to enable its restructuring plan to be approved and implemented:

Description	Estimated Security Value	ALLOCATION		
		BNS Line	LCLL Account Payable	Total
Stanhope Simpson Insurance Claim	2,500,000	1,500,000	1,000,000	2,500,000
Sale of Quarry	3,000,000	2,000,000	1,000,000	3,000,000
Sale of Envirem	7,000,000	5,000,000	2,000,000	7,000,000
Sale of Machine Shop	2,000,000	1,000,000	1,000,000	2,000,000
Sale of Under-utilized or Redundant Equipment	1,000,000	1,000,000		1,000,000
Sale of Vanderply Mill – Sweden	25,000,000	25,000,000		25,000,000
Sale of Brunway Highway Project	7,500,000	5,800,000	1,700,000	7,500,000
Total	48,000,000	41,300,000	6,700,000	48,000,000
Maximum Amount Outstanding		38,500,000	6,700,000	45,200,000
Difference		2,800,000	0	2,800,000

As noted above, the estimated value of the available security is only slightly greater than the maximum availability on the BNS Line. The actual amount of realizations to be paid on the BNS Line at any point in time would be subject to the PNB Security Reversion Right calculation described above.

Summary

Atcon has been a strong and robust contributor to the New Brunswick economy for many years notwithstanding some recent operational and financial troubles. Management has identified the causes of the recent troubles and has taken decisive action in all aspects of the business to improve its working capital and cash flow position by reducing costs, improving efficiencies, discontinuing non-core operations and selling redundant assets. Management is committed to a new focus, one that is grounded in Atcon's core competencies of heavy civil construction and steel fabrication. Management's Preliminary Restructuring Plan has been described throughout this document.

In order for Atcon to successfully implement its Plan, it requires the assistance and cooperation of its two largest stakeholders: PNB and BNS. In particular, it is asking BNS to provide an additional unsecured \$9.4 million availability on the operating line of credit and, in consideration of BNS doing so, management is asking PNB to transfer some of its security to BNS on a conditional basis, i.e., subject to the PNB Security Reversion Right, as collateral security to support approval of the \$9.4 million Interim Financing until such time as the BNS Line is otherwise suitably supported.



Exhibit A

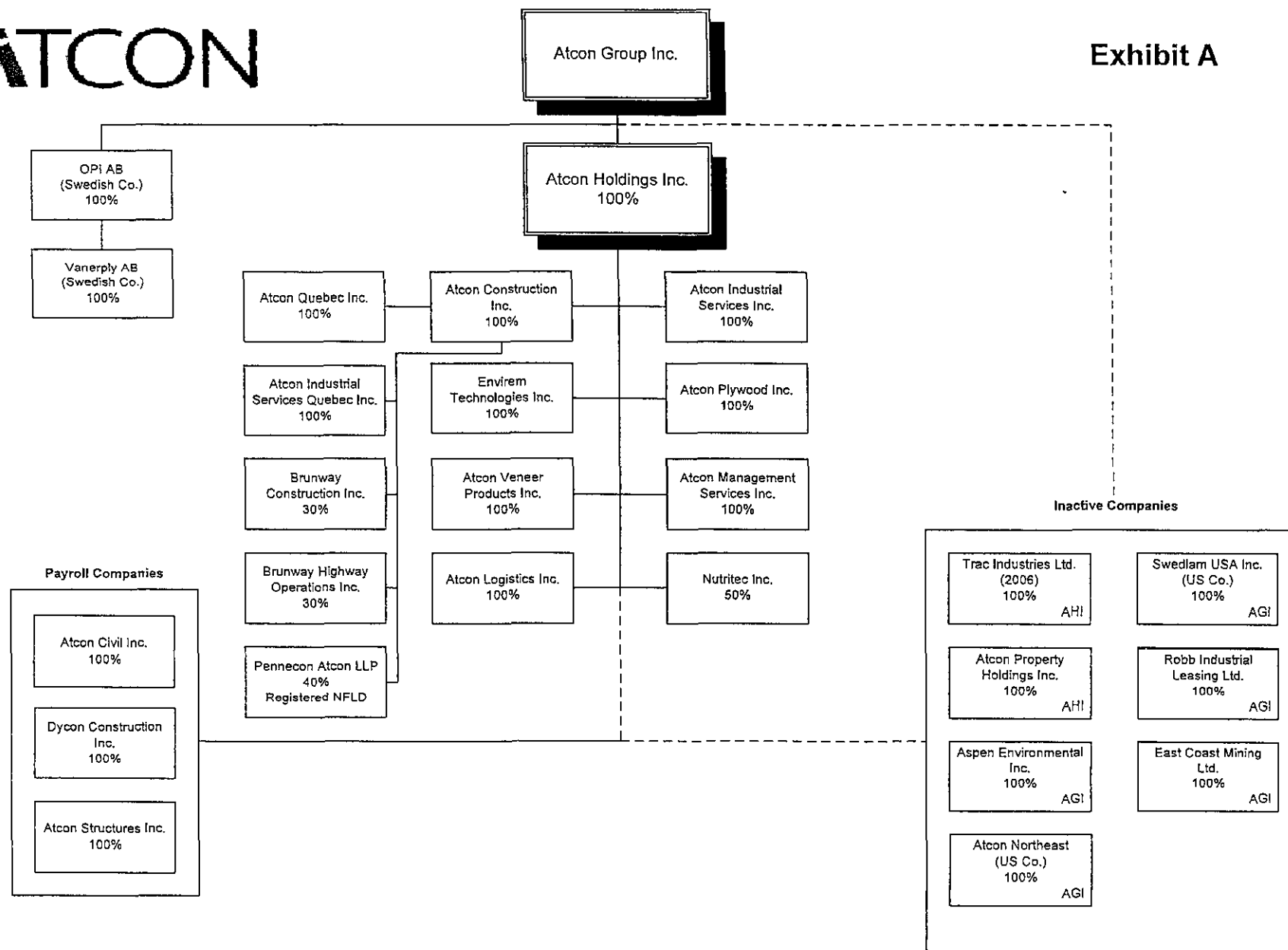




Exhibit B

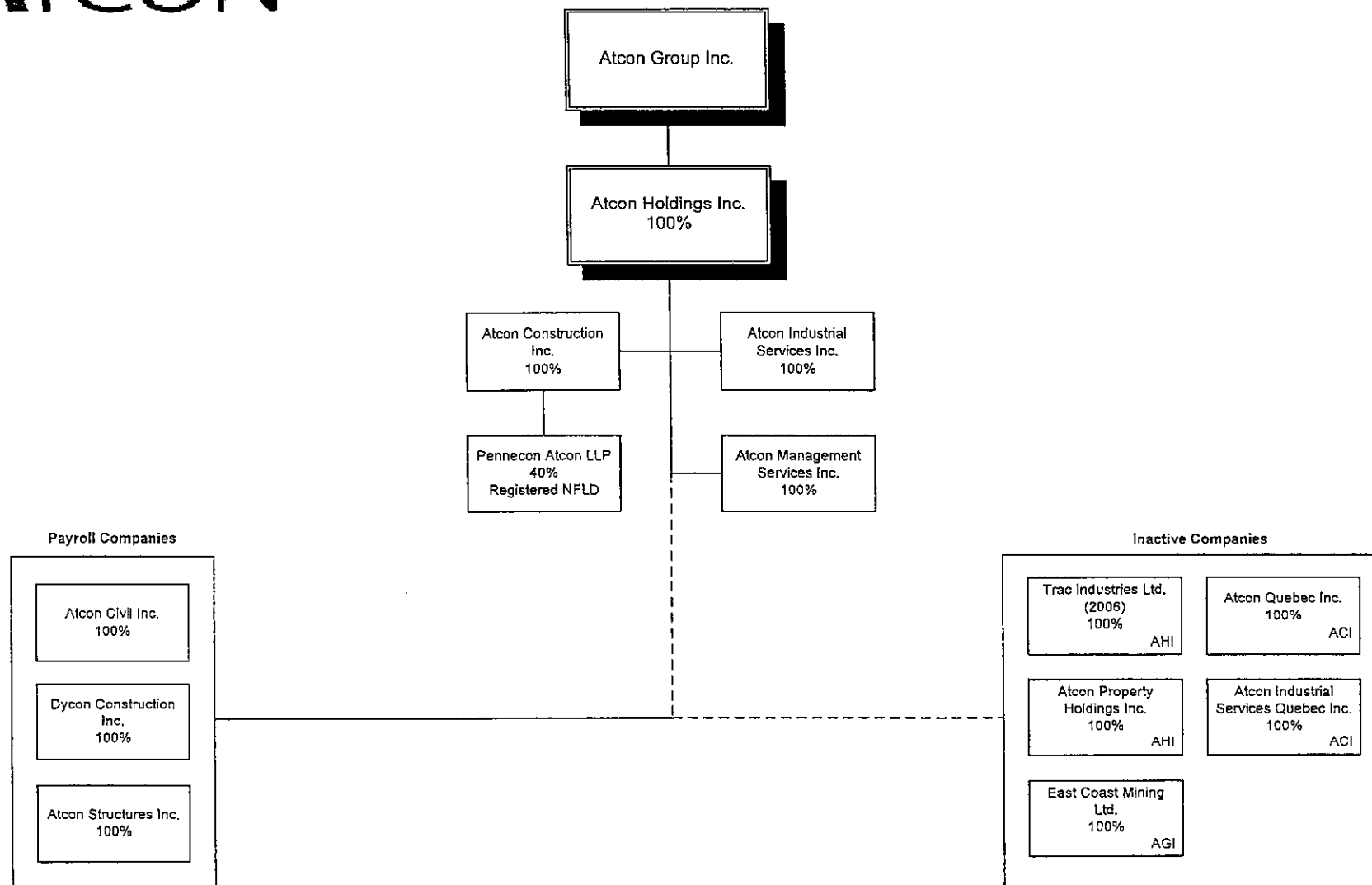


Exhibit C

Atcon Holdings Inc.
Summary of Consolidated Cash Flows
As at August 15, 2009

Week Ended	Actual 15-Aug-09	Forecast 22-Aug-09	Forecast 29-Aug-09	Forecast 5-Sep-09	Forecast 12-Sep-09	Forecast 19-Sep-09	Forecast 26-Sep-09	Forecast 3-Oct-09	Forecast 6-Oct-09	Forecast 13-Oct-09	Forecast 20-Oct-09	Forecast 27-Oct-09	Summary Aug 15 to Oct 31
Beginning Balance	(29,091,227)	(27,784,897)	(28,968,135)	(28,073,768)	(29,406,620)	(31,133,293)	(31,970,236)	(31,174,301)	(31,443,350)	(32,775,889)	(33,654,536)	(32,905,079)	(29,091,227)
Cash Inflows													
Alcon Construction	335,817	916,841	2,294,600	821,150	-	643,876	3,814,390	600,408	-	-	1,800,000	4,926,179	16,153,271
AIS - Fab Division	279,257	-	-	330,187	-	-	250,000	2,440,383	-	-	350,000	150,000	3,793,806
AIS - Machining Division	156,932	84,416	78,147	57,272	31,430	41,426	66,980	22,424	721	-	-	514,408	1,056,154
Environ Technologies	453,126	184,750	240,201	184,750	184,750	217,090	184,750	184,750	184,750	100,000	100,000	100,000	2,318,517
Corporate entities	47,353	-	80,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	547,353
Total Cash Received from Customers	1,374,485	1,186,007	2,662,948	1,443,359	266,180	952,392	4,366,120	3,297,944	235,471	150,000	2,300,000	5,740,587	23,873,502
Cash Outflows													
Repairs & Misc	-	(104,800)	(9,600)	(8,100)	(4,000)	(4,000)	(136,250)	(6,100)	(3,600)	(3,600)	(3,600)	(270,600)	(554,450)
Fuel / Liquid Asphalt	-	(145,500)	(112,000)	(457,200)	(220,900)	(239,400)	(900)	(800)	(800)	(24,300)	(800)	(800)	(1,203,400)
Travel	-	(500)	(42,400)	(17,600)	(42,500)	(600)	(58,600)	(800)	(25,800)	(600)	(25,600)	(800)	(215,200)
Accommodations & Food	-	(15,650)	(36,150)	(38,850)	(47,300)	(38,600)	(20,100)	(5,100)	(5,100)	(5,100)	(9,800)	(5,100)	(228,650)
Trucking	-	(98,750)	(137,750)	(301,200)	(299,700)	(309,700)	(47,700)	(44,300)	(44,300)	(44,300)	(44,300)	(44,300)	(1,416,300)
Steel / Concrete	-	(19,300)	(19,300)	(427,300)	(11,700)	(11,700)	(11,700)	(434,840)	(10,600)	(10,600)	(10,600)	(251,480)	(1,219,120)
Consumables	-	(49,800)	(49,800)	(170,014)	(185,014)	(185,014)	(189,048)	(159,514)	(159,514)	(159,514)	(159,514)	(159,514)	(3,092,260)
Utilities	-	(8,600)	(20,600)	(23,027)	(30,000)	(8,600)	(9,500)	(24,127)	(27,000)	(5,000)	(8,600)	(18,800)	(193,855)
Subcontracting	-	(121,500)	(19,800)	(63,190)	(67,264)	(69,287)	(485,705)	(593,387)	(108,275)	(67,567)	(108,275)	(1,567,537)	(3,271,857)
Insurance Prem.	(7,530)	(86,638)	(69,170)	(22,849)	(12,396)	(2,12)	(14,205)	(77,603)	(12,396)	(2,12)	(1,890)	(77,603)	(382,903)
Other	(700,121)	(25,200)	(45,200)	(438,545)	(332,200)	(32,200)	(42,200)	(442,645)	(31,300)	(56,300)	(37,800)	(434,634)	(2,518,344)
Total Cash Paid to Suppliers	(707,651)	(676,438)	(561,970)	(1,987,875)	(1,132,974)	(879,313)	(2,531,906)	(1,789,016)	(426,485)	(377,113)	(410,579)	(2,831,018)	(14,294,335)
Total Payroll Related Disbursements	(797,331)	(294,286)	(532,505)	(402,963)	(497,355)	(288,228)	(501,637)	(249,001)	(688,345)	(86,576)	(538,090)	(73,655)	(6,949,372)
Purchases of Property	2,000,000	-	-	175,000	(25,000)	(100,000)	(100,000)	(100,000)	(100,000)	(145,000)	(145,000)	(120,000)	(615,000)
LTD lease payments tied to work	(285,296)	(330,755)	(395,079)	(251,346)	(141,647)	(282,850)	(227,552)	(651,990)	(160,992)	(219,365)	(235,094)	(528,408)	(3,711,385)
LTD lease payments not tied to work	(87,876)	(134,851)	(225,995)	(146,597)	(34,842)	(80,248)	(58,501)	(371,357)	(34,343)	(63,021)	(65,642)	(239,817)	(1,552,191)
Scollabank Interest Paid	-	(252,529)	(2,500)	(26,253)	(2,500)	(2,500)	(2,500)	(252,529)	(2,500)	(26,253)	(2,500)	(252,529)	(825,694)
Contingencies	-	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(495,000)
Payables in Arrears	-	(715,287)	(3,531)	(111,187)	(113,536)	(111,194)	(105,078)	(108,101)	(108,345)	(111,317)	(108,638)	(103,531)	(1,699,744)
Increase (Decrease) in Cash	1,386,331	(1,260,238)	894,367	(1,332,852)	(1,726,674)	(836,943)	795,935	(269,049)	(1,332,539)	(878,647)	749,457	1,546,628	(2,267,224)
Ending Balance	(27,704,897)	(28,968,135)	(28,073,768)	(29,406,620)	(31,133,293)	(31,970,236)	(31,174,301)	(31,443,350)	(32,775,889)	(33,654,536)	(32,905,079)	(31,358,451)	(31,358,451)

Exhibit C

Atcon Holdings Inc.
Summary of Consolidated Cash Flows
As at August 15, 2009

Week Ended	Forecast 27-Nov-09	Forecast 14-Nov-09	Forecast 21-Nov-09	Forecast 28-Nov-09	Forecast 5-Dec-09	Forecast 12-Dec-09	Forecast 19-Dec-09	Forecast 26-Dec-09	Forecast 2-Jan-10	Forecast 9-Jan-10	Forecast 16-Jan-10	Forecast 23-Jan-10	Forecast 30-Jan-10	Summary Nov 7 to Jan 30	Summary Aug 15 to Jan 30
Beginning Balance	(31,358,451)	(32,362,226)	(33,679,096)	(35,276,893)	(35,422,481)	(37,212,826)	(38,473,203)	(38,198,278)	(32,037,098)	(33,577,359)	(34,843,632)	(36,589,167)	(30,440,465)	(31,358,451)	(29,091,227)
Cash Inflows															
Atcon Construction	-	-	200,000	1,697,790	-	-	3,800,000	6,197,002	490,000	-	-	8,120,300	6,900,000	27,405,091	43,558,362
AIS - Fab Division	1,046,280	150,000	-	450,000	735,010	-	250,000	-	713,000	-	-	-	1,775,232	5,120,522	8,920,328
AIS - Machining Division	-	-	-	14,400	-	-	-	250,000	-	-	-	-	-	264,400	1,320,554
Enviroem Technologies	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	1,300,000	3,618,917
Corporate entities	-	-	-	-	-	-	-	-	-	-	-	-	-	-	547,353
Total Cash Received from Customers	1,146,280	250,000	300,000	2,262,190	835,010	100,000	4,150,000	6,547,002	1,303,000	100,000	100,000	8,220,300	8,775,232	34,080,013	57,965,515
Cash Outflows															
Repairs & Misc	(177,600)	(2,600)	(2,600)	(289,600)	(2,600)	(2,600)	(2,600)	(619,600)	(2,200)	(2,200)	(2,200)	(4,700)	(2,200)	(1,093,300)	(1,647,750)
Fuel / Liquid Asphalt	(600)	(4,100)	(20,600)	(600)	(600)	(4,100)	(20,600)	(600)	(500)	(4,000)	(20,600)	(500)	(500)	(77,800)	(1,281,200)
Travel	(275,400)	(400)	(25,400)	(400)	(25,400)	(400)	(25,400)	(250,400)	(25,300)	(300)	(25,300)	(300)	(300)	(854,700)	(869,900)
Accommodations & Food	(4,800)	(4,800)	(3,300)	(800)	(800)	(800)	(5,300)	(800)	(700)	(700)	(700)	(5,200)	(700)	(35,400)	(262,050)
Trucking	(35,500)	(35,500)	(35,500)	(35,500)	(35,500)	(35,500)	(35,500)	(35,500)	(31,800)	(31,800)	(31,800)	(31,800)	(31,800)	(443,000)	(1,859,300)
Steel / Concrete	(7,700)	(7,700)	(7,700)	(272,180)	(7,700)	(7,700)	(7,700)	(7,700)	(6,400)	(6,400)	(6,400)	(6,400)	(6,400)	(358,080)	(1,577,200)
Consumables	(152,570)	(152,570)	(152,570)	(152,570)	(152,570)	(43,756)	(43,756)	(43,756)	(37,856)	(37,856)	(37,856)	(37,856)	(37,856)	(1,083,399)	(4,175,658)
Utilities	(35,027)	(17,500)	(5,000)	(4,900)	(30,277)	(25,750)	(250)	(1,350)	(21,877)	(24,250)	(14,750)	(250)	(1,800)	(184,033)	(377,887)
Subcontracting	(273,275)	(63,087)	(103,775)	(63,087)	(103,775)	(17,797)	(58,485)	(17,797)	(56,585)	(15,897)	(56,585)	(213,570)	(56,585)	(1,100,300)	(4,372,157)
Insurance Prem.	-	(12,396)	(212)	(72,457)	(7,036)	(12,396)	(212)	(17,714)	(61,778)	(4,866)	(7,742)	(1,890)	(77,603)	(278,301)	(659,209)
Other	(29,810)	(50,300)	(35,300)	(26,384)	(424,060)	(44,550)	(29,550)	(26,384)	(422,950)	(18,860)	(43,550)	(25,384)	(1,016,800)	(2,192,684)	(4,712,027)
Total Cash Paid to Suppliers	(992,293)	(350,953)	(397,957)	(898,528)	(790,318)	(196,349)	(229,353)	(1,021,601)	(667,947)	(146,929)	(247,383)	(327,850)	(1,232,544)	(7,499,995)	(21,794,334)
Total Payroll Related Disbursements	(467,765)	(595,299)	(681,035)	(611,230)	(663,376)	(727,756)	(658,529)	(687,910)	(743,541)	(907,321)	(862,284)	(901,821)	(835,890)	(9,353,861)	(14,303,833)
Purchases of Property	(120,000)	(120,000)	(120,000)	(120,000)	-	-	-	-	-	-	-	-	-	(480,000)	(1,095,000)
LTD/lease payments tied to work	(250,163)	(289,397)	(418,712)	(290,861)	(621,530)	(213,836)	(638,222)	(207,117)	(816,516)	(87,691)	(487,339)	(351,240)	(739,310)	(5,413,036)	(9,124,421)
LTD/lease payments not tied to work	(171,157)	(38,240)	(111,399)	(84,451)	(368,909)	(51,185)	(189,277)	(53,053)	(456,578)	(53,069)	(101,029)	(93,056)	(343,936)	(2,135,341)	(3,687,533)
Schoolbank Interest Paid	(2,500)	(26,253)	(2,500)	(252,529)	(2,500)	(26,253)	(2,500)	(252,529)	(2,500)	(26,253)	(2,500)	(252,529)	(2,500)	(853,847)	(1,678,942)
Contingencies	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(585,000)	(1,080,000)
Payables in Arrears	(111,187)	(101,728)	(111,194)	(105,078)	(114,718)	(100,000)	(111,194)	(108,610)	(111,187)	(100,000)	(100,000)	(100,000)	(100,000)	(1,374,896)	(3,074,646)
Increase (Decrease) in Cash	(1,003,775)	(1,316,370)	(1,597,797)	(145,588)	(1,790,344)	(1,266,379)	2,274,925	4,161,182	(1,540,271)	(1,266,263)	(1,745,536)	6,146,702	5,478,051	8,394,037	4,126,813
Ending Balance	(32,362,226)	(33,679,096)	(35,276,893)	(35,422,481)	(37,212,826)	(38,473,203)	(36,198,278)	(32,037,098)	(33,577,359)	(34,843,632)	(36,589,167)	(30,440,465)	(24,964,414)	(24,964,414)	(24,964,414)

Exhibit D

Alcon Construction Inc.
Summary of Cash Flows
As at August 15, 2009

Week Ended	Actual 15-Aug-09	Forecast 22-Aug-09	Forecast 29-Aug-09	Forecast 5-Sep-09	Forecast 12-Sep-09	Forecast 19-Sep-09	Forecast 26-Sep-09	Forecast 3-Oct-09	Forecast 10-Oct-09	Forecast 17-Oct-09	Forecast 24-Oct-09	Forecast 31-Oct-09	Summary Aug 15 to Oct 31
Beginning Balance	(9,952,195)	(11,076,839)	(10,897,736)	(9,667,491)	(10,909,999)	(11,746,884)	(12,089,351)	(10,712,824)	(12,323,830)	(12,665,431)	(12,965,215)	(11,448,479)	(9,952,195)
Summary of Customers													
DOT Paving/BHO	100,000	-	62,355	-	-	467,126	674,390	-	-	-	-	1,615,900	2,919,771
Western Paving	-	-	-	-	-	-	900,000	-	-	-	1,800,000	-	2,700,000
Deh Cho Bridge	-	-	-	844,985	-	-	-	500,406	-	-	-	404,442	1,649,835
Kakisa	-	-	830,000	-	-	-	1,615,000	-	-	-	-	1,755,837	4,200,837
Muskeg	-	-	-	-	-	-	-	-	-	-	-	-	-
Vale Inco	-	-	811,050	-	-	-	625,000	-	-	-	-	1,150,000	2,586,050
Ocean Spray	-	-	-	-	-	-	-	-	-	-	-	-	-
Cape Dyer	116,918	166,841	-	176,175	-	140,000	-	-	-	-	-	-	599,935
Other	118,899	750,000	591,195	-	-	36,750	-	-	-	-	-	-	1,496,844
Other Significant events, net of general AP	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash Received from Customers	335,817	916,841	2,294,600	821,160	-	643,876	3,814,390	600,408	-	-	1,800,000	4,926,179	16,153,271
Transfers (to) from Related Co	(495,000)	-	-	-	-	-	-	-	-	-	-	-	(495,000.00)
Disbursement Payments													
Repairs & Mice	-	(100,000)	-	-	-	-	(132,250)	-	-	-	-	(284,500)	(496,750)
Fuel / Liquid Asphalt	-	(110,000)	(110,000)	(455,000)	(220,000)	(210,000)	-	-	-	-	-	-	(1,105,000)
Travel	-	-	(41,000)	(17,000)	(41,000)	-	(58,000)	-	(25,000)	-	(25,000)	-	(207,000)
Accommodations & Food	-	(14,400)	(34,900)	(37,400)	(45,100)	(37,400)	(16,900)	(4,000)	(4,000)	(4,000)	(8,500)	(4,000)	(213,600)
Trucking	-	(53,000)	(92,000)	(252,000)	(252,000)	(262,000)	-	-	-	-	-	-	(911,000)
Steel / Concrete	-	-	-	(405,600)	-	-	-	(424,240)	-	-	-	(240,880)	(1,070,720)
Consumables	-	-	-	-	-	-	(1,530,034)	-	-	-	-	-	(1,530,034)
Utilities	-	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(55,000)
Subcontracting	-	-	-	-	-	-	(392,000)	(232,000)	-	-	-	(1,500,000)	(2,124,000)
Other - including CRA arrears	(604,887)	(6,000)	(16,000)	(406,000)	(6,000)	(6,000)	(16,000)	(406,000)	(6,000)	(6,000)	(16,000)	(406,000)	(1,900,887)
Cash Paid to Suppliers	(604,887)	(268,400)	(299,900)	(1,578,000)	(570,100)	(520,400)	(2,152,184)	(1,071,240)	(40,000)	(15,000)	(54,500)	(2,420,380)	(10,108,971)
Cash Paid for Insurance Prem.	-	(19,641)	(54,743)	(5,136)	-	-	-	(59,879)	-	-	-	(59,879)	(199,278)
Total Payroll Related Disbursements	(91,514)	(93,819)	(133,864)	(229,523)	(101,910)	(151,854)	(91,152)	(203,661)	(114,870)	(25,149)	(21,990)	(24,510)	(1,283,817)
Long Term Debt / Leases	(289,079)	(222,038)	(353,712)	(118,247)	(132,442)	(266,837)	(146,106)	(533,169)	(152,906)	(206,510)	(175,285)	(484,019)	(3,060,371)
LTD / Leases not tied to work	-	(113,840)	(223,136)	(132,762)	(32,433)	(47,251)	(48,420)	(343,445)	(33,825)	(53,124)	(31,489)	(232,191)	(1,291,918)
Interest Received	-	-	-	-	-	-	-	-	-	-	-	-	-
Increase (Decrease) in Cash	(1,124,544)	179,103	1,230,245	(1,242,508)	(836,885)	(342,467)	1,376,527	(1,611,006)	(341,601)	(269,784)	1,516,736	1,705,200	208,917
Ending Balance	(11,076,839)	(10,897,736)	(9,667,491)	(10,909,999)	(11,746,884)	(12,089,351)	(10,712,824)	(12,323,830)	(12,665,431)	(12,965,215)	(11,448,479)	(9,743,279)	(9,743,279)

Exhibit D

Atcon Construction Inc.
Summary of Cash Flows
As at August 15, 2009

Week Ended	Forecast 11-Nov-09	Forecast 14-Nov-09	Forecast 21-Nov-09	Forecast 28-Nov-09	Forecast 5-Dec-09	Forecast 12-Dec-09	Forecast 19-Dec-09	Forecast 26-Dec-09	Forecast 2-Jan-10	Forecast 9-Jan-10	Forecast 16-Jan-10	Forecast 23-Jan-10	Forecast 30-Jan-10	Summary Nov 7 to Jan 30	Summary Aug 15 to Jan 30
Beginning Balance	(9,743,279)	(10,554,265)	(11,387,085)	(11,951,468)	(11,672,259)	(13,275,373)	(14,170,155)	(11,484,945)	(7,006,123)	(8,512,598)	(9,483,626)	(10,485,267)	(3,602,751)	(9,743,279)	(9,952,195)
Summary of Customers															
DOT Paving/BHO	-	-	-	-	-	-	-	-	-	-	-	420,300	-	420,300	2,340,071
Western Paving	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,700,000
Den Cho Bridge	-	-	-	547,790	-	-	3,800,000	147,002	-	-	-	1,300,000	-	5,794,791	7,444,526
Kakisa	-	-	-	-	-	-	-	-	490,000	-	-	-	-	490,000	4,690,837
Muskeg	-	-	-	-	-	-	-	4,900,000	-	-	-	5,400,000	-	11,300,000	11,300,000
Vale Inco	-	-	-	1,150,000	-	-	-	1,150,000	-	-	-	-	1,500,000	3,800,000	5,386,050
Ocean Spray	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cape Dyer	-	-	-	-	-	-	-	-	-	-	-	-	-	-	599,935
Other	-	-	200,000	-	-	-	-	-	-	-	-	-	-	200,000	1,696,844
Other Significant events, net of general AP	-	-	-	-	-	-	-	-	-	-	-	-	-	5,400,000	5,400,000
Cash Received from Customers	-	-	200,000	1,697,790	-	-	3,800,000	6,197,002	490,000	-	-	8,120,300	6,900,000	27,405,091	43,558,362
Transfers (to) from Related Co	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(495,000.00)
Disbursement Payments															
Repairs & Mice	(175,000)	-	-	(264,500)	-	-	-	(614,500)	-	-	-	-	-	(1,054,000)	(1,550,750)
Fuel / Liquid Asphalt	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(1,105,000)
Travel	(275,000)	-	(25,000)	-	(25,000)	-	(25,000)	(250,000)	(25,000)	-	(25,000)	-	-	(650,000)	(857,000)
Accommodations & Food	(4,000)	(4,000)	(8,500)	-	-	-	(4,500)	-	-	-	-	(4,500)	-	(25,500)	(239,100)
Trucking	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(911,000)
Steel / Concrete	-	-	-	(264,480)	-	-	-	-	-	-	-	-	-	(264,480)	(1,335,200)
Consumables	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(1,530,034)
Utilities	(5,000)	(5,000)	(5,000)	(250)	(250)	(250)	(250)	(250)	(250)	(250)	(250)	(250)	-	(17,250)	(72,250)
Subcontracting	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(2,124,000)
Other - including CRA arrears	(6,000)	(6,000)	(16,000)	(250)	(400,250)	(250)	(10,250)	(250)	(400,250)	(250)	(250)	(250)	(1,000,000)	(1,840,250)	(3,741,117)
Cash Paid to Suppliers	(465,000)	(15,000)	(54,500)	(529,480)	(425,500)	(500)	(40,000)	(985,000)	(425,500)	(500)	(25,500)	(5,000)	(1,000,000)	(3,851,480)	(13,960,451)
Cash Paid for Insurance Prem.	-	-	-	(54,743)	(5,136)	-	-	-	(59,879)	-	-	-	(59,879)	(179,637)	(378,915)
Total Payroll Related Disbursements	(36,021)	(509,610)	(271,890)	(509,610)	(285,921)	(641,790)	(339,210)	(641,790)	(353,241)	(849,690)	(446,310)	(850,950)	(433,500)	(6,169,533)	(7,453,350)
Long Term Debt / Leases	(148,780)	(279,867)	(356,888)	(244,155)	(515,613)	(204,279)	(579,301)	(162,195)	(717,689)	(88,287)	(438,699)	(318,707)	(716,053)	(4,750,512)	(7,810,883)
LTD / Leases not tied to work	(161,185)	(28,343)	(51,105)	(80,592)	(370,944)	(48,214)	(156,279)	(45,194)	(440,166)	(52,551)	(91,133)	(63,126)	(336,950)	(1,959,782)	(3,251,700)
Interest Received	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Increase (Decrease) in Cash	(810,955)	(832,820)	(564,383)	279,209	(1,503,114)	(894,783)	2,585,211	4,478,821	(1,506,475)	(971,028)	(1,001,641)	6,882,515	4,353,618	10,494,147	10,703,063
Ending Balance	(10,554,265)	(11,387,085)	(11,951,468)	(11,672,259)	(13,275,373)	(14,170,155)	(11,484,945)	(7,006,123)	(8,512,598)	(9,483,626)	(10,485,267)	(3,602,751)	750,868	750,868	750,868

Exhibit E

Alcon Industrial Services Inc. - Fabrication
Summary of Cash Flows
As at August 15, 2009

Week Ended	Actual 15-Aug-09	Forecast 22-Aug-09	Forecast 29-Aug-09	Forecast 5-Sep-09	Forecast 12-Sep-09	Forecast 19-Sep-09	Forecast 26-Sep-09	Forecast 3-Oct-09	Forecast 10-Oct-09	Forecast 17-Oct-09	Forecast 24-Oct-09	Forecast 31-Oct-09	Summary Aug 15 to Oct 31
Begin Balance	(3,141,523)	(3,007,906)	(3,339,477)	(3,580,855)	(3,520,600)	(3,958,334)	(4,437,589)	(4,768,589)	(3,123,504)	(3,746,309)	(4,156,273)	(4,484,246)	(3,141,523)
Significant Customers													
Alcon Construction - Deh Cho Bridge	-	-	-	330,187	-	-	-	399,240	-	-	-	-	729,427
Cadwell & Ross	-	-	-	-	-	-	-	561,763	-	-	-	-	561,763
PCS Potash	-	-	-	-	-	-	-	-	-	-	-	-	-
Michelin	-	-	-	-	-	-	-	1,479,360	-	-	-	-	1,479,360
Inventory sales	-	-	-	-	-	-	-	-	-	-	-	150,000	150,000
Other	279,257	-	-	-	-	-	250,000	-	-	-	350,000	-	879,257
Cash Received from Customers	279,257	-	-	330,187	-	-	250,000	2,440,363	-	-	350,000	150,000	3,799,806
Supplier Payments													
Repairs & Mfct	-	(3,200)	(3,200)	(4,000)	(4,000)	(4,000)	(4,000)	(3,600)	(3,600)	(3,600)	(3,600)	(3,600)	(40,400)
Fuel / Liquid Asphalt	-	(700)	(700)	(900)	(900)	(900)	(900)	(800)	(800)	(800)	(800)	(800)	(9,000)
Travel	-	(500)	(500)	(600)	(600)	(600)	(600)	(600)	(600)	(600)	(600)	(600)	(6,400)
Accommodations & Food	-	(1,000)	(1,000)	(1,200)	(1,200)	(1,200)	(1,200)	(1,100)	(1,100)	(1,100)	(1,100)	(1,100)	(12,300)
Trucking	-	(28,000)	(28,000)	(35,200)	(35,200)	(35,200)	(35,200)	(31,800)	(31,800)	(31,800)	(31,800)	(31,800)	(355,800)
Steel / Concrete	-	(9,300)	(9,300)	(11,700)	(11,700)	(11,700)	(11,700)	(10,600)	(10,600)	(10,600)	(10,600)	(10,600)	(118,400)
Consumables	-	(44,800)	(44,800)	(165,014)	(165,014)	(165,014)	(165,014)	(159,514)	(159,514)	(159,514)	(159,514)	(159,514)	(1,547,225)
Utilities	-	-	-	(18,027)	-	-	-	(18,027)	-	-	-	-	(36,055)
Subcontracting	-	(116,000)	(14,300)	(63,190)	(67,264)	(69,287)	(93,705)	(361,397)	(108,275)	(67,587)	(108,275)	(67,587)	(1,135,857)
Other	(10,225)	(7,700)	(7,700)	(9,700)	(9,700)	(9,700)	(9,700)	(8,800)	(8,800)	(8,800)	(8,800)	(8,800)	(108,425)
Cash Paid to Suppliers	(10,225)	(211,200)	(109,500)	(309,531)	(295,578)	(297,601)	(322,019)	(596,228)	(325,089)	(284,401)	(325,089)	(284,401)	(3,370,863)
Cash Paid for Insurance Premiums	-	(62,331)	-	(15,824)	-	-	-	(15,824)	-	-	-	(15,824)	(109,803)
Total P/R Related Disbursements	(129,672)	(47,421)	(109,500)	(39,710)	(121,414)	(62,583)	(128,954)	(860)	(192,525)	(16,644)	(202,214)	(7,902)	(1,054,999)
Purchases of Property	-	-	-	175,000	(25,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(145,000)	(120,000)	(615,000)
Long Term Debt / Leases	(5,742)	(10,619)	(26,877)	(79,887)	(5,742)	(6,971)	(30,027)	(82,365)	(5,191)	(8,920)	(5,670)	(27,405)	(297,396)
Increase (Decrease) in Cash	133,617	(331,572)	(241,377)	60,255	(447,734)	(469,255)	(331,000)	1,645,085	(622,805)	(409,964)	(327,973)	(305,532)	(1,648,255)
Ending Balance	(3,007,906)	(3,339,477)	(3,580,855)	(3,520,600)	(3,958,334)	(4,437,589)	(4,768,589)	(3,123,504)	(3,746,309)	(4,156,273)	(4,484,246)	(4,789,778)	

Exhibit E

Atcon Industrial Services Inc. - Fabricator
Summary of Cash Flows
As at August 15, 2009

Week Ended	Forecast 7-Nov-09	Forecast 14-Nov-09	Forecast 21-Nov-09	Forecast 28-Nov-09	Forecast 5-Dec-09	Forecast 12-Dec-09	Forecast 19-Dec-09	Forecast 26-Dec-09	Forecast 2-Jan-10	Forecast 9-Jan-10	Forecast 16-Jan-10	Forecast 23-Jan-10	Forecast 30-Jan-10	Summary Nov 7 to Jan 30	Summary Aug 15 to Jan 30
Begin Balance	(4,789,778)	(4,588,995)	(4,861,780)	(5,425,776)	(5,448,236)	(5,229,355)	(5,382,197)	(5,339,724)	(5,506,829)	(5,148,853)	(5,288,309)	(5,539,624)	(5,875,468)	(4,789,778)	(3,141,523)
Significant Customers															
Alcon Construction - Deh Cho Bridge	240,880	-	-	-	264,480	-	-	-	-	-	-	-	-	505,360	1,234,787
Cadwell & Ross	429,400	-	-	-	245,530	-	-	-	-	-	-	-	-	674,930	1,238,692
PCS Potash	226,000	-	-	-	226,000	-	-	-	113,000	-	-	-	-	565,000	965,000
Michelin	-	-	-	-	-	-	-	-	-	-	-	-	1,775,232	1,775,232	3,254,592
Inventory sales	150,000	150,000	-	-	-	-	-	-	-	-	-	-	-	300,000	450,000
Other	-	-	-	450,000	-	-	250,000	-	600,000	-	-	-	-	1,300,000	2,179,257
Cash Received from Customers	1,046,280	150,000	-	450,000	736,010	-	250,000	-	713,000	-	-	-	1,775,232	5,120,522	8,920,328
Supplier Payments															
Repairs & Mice	(2,600)	(2,600)	(2,600)	(2,600)	(2,600)	(2,600)	(2,600)	(2,600)	(2,200)	(2,200)	(2,200)	(2,200)	(2,200)	(31,800)	(72,200)
Fuel / Liquid Asphalt	(600)	(600)	(600)	(600)	(600)	(600)	(600)	(600)	(500)	(500)	(500)	(500)	(500)	(7,300)	(16,300)
Travel	(400)	(400)	(400)	(400)	(400)	(400)	(400)	(400)	(300)	(300)	(300)	(300)	(300)	(4,700)	(11,100)
Accommodations & Food	(800)	(800)	(800)	(800)	(800)	(800)	(800)	(800)	(700)	(700)	(700)	(700)	(700)	(9,900)	(22,200)
Trucking	(23,000)	(23,000)	(23,000)	(23,000)	(23,000)	(23,000)	(23,000)	(23,000)	(19,300)	(19,300)	(19,300)	(19,300)	(19,300)	(280,500)	(636,300)
Steel / Concrete	(7,700)	(7,700)	(7,700)	(7,700)	(7,700)	(7,700)	(7,700)	(7,700)	(6,400)	(6,400)	(6,400)	(6,400)	(6,400)	(93,600)	(212,000)
Consumables	(152,570)	(152,570)	(152,570)	(152,570)	(152,570)	(152,570)	(152,570)	(152,570)	(37,856)	(37,856)	(37,856)	(37,856)	(37,856)	(1,083,398)	(2,630,624)
Utilities	(18,027)	-	-	-	(18,027)	-	-	-	(18,027)	-	-	-	-	(54,082)	(90,137)
Subcontracting	(273,275)	(68,087)	(103,775)	(68,087)	(103,775)	(17,797)	(68,485)	(17,797)	(56,585)	(15,897)	(56,585)	(213,570)	(56,585)	(1,100,300)	(2,237,157)
Other	(6,300)	(6,300)	(6,300)	(6,300)	(6,300)	(6,300)	(6,300)	(6,300)	(5,300)	(5,300)	(5,300)	(5,300)	(5,300)	(76,900)	(185,325)
Cash Paid to Suppliers	(485,272)	(257,057)	(297,745)	(257,057)	(315,772)	(102,953)	(143,641)	(102,953)	(147,168)	(88,453)	(129,141)	(286,126)	(129,141)	(2,742,480)	(6,113,343)
Cash Paid for Insurance Premiums	-	-	-	(15,824)	-	-	-	(15,824)	-	-	-	-	(15,824)	(47,472)	(157,275)
Total P/R Related Disbursements	(160,358)	(39,986)	(136,179)	(52,797)	(116,990)	(44,146)	(54,968)	(22,301)	(121,490)	(45,811)	(121,624)	(39,151)	(111,581)	(1,067,293)	(2,122,292)
Purchases of Property	(120,000)	(120,000)	(120,000)	(120,000)	-	-	-	-	-	-	-	-	-	(480,000)	(1,095,000)
Long Term Debt / Leases	(79,867)	(5,742)	(10,073)	(26,871)	(84,366)	(5,742)	(8,918)	(26,027)	(85,355)	(5,191)	(551)	(10,555)	(20,906)	(371,185)	(668,582)
Increase (Decrease) in Cash	200,783	(272,785)	(563,996)	(22,459)	218,881	(152,842)	42,473	(167,105)	357,976	(139,456)	(251,315)	(335,844)	1,497,780	412,091	(1,236,165)
Ending Balance	(4,588,995)	(4,861,780)	(5,425,776)	(5,448,236)	(5,229,355)	(5,382,197)	(5,339,724)	(5,506,829)	(5,148,853)	(5,288,309)	(5,539,624)	(5,875,468)	(4,377,587)	(4,377,587)	(4,377,587)

Exhibit F

Envirem Technologies Inc.
Summary of Cash Flows
As at August 15, 2009

	Actual 15-Aug-09	Forecast 22-Aug-09	Forecast 29-Aug-09	Forecast 5-Sep-09	Forecast 12-Sep-09	Forecast 19-Sep-09	Forecast 26-Sep-09	Forecast 3-Oct-09	Forecast 10-Oct-09	Forecast 17-Oct-09	Forecast 24-Oct-09	Forecast 31-Oct-09	Summary Aug 15 to Oct 31
Begin Balance	(1,399,200)	(1,046,139)	(971,159)	(843,047)	(683,462)	(589,710)	(420,010)	(342,682)	(185,597)	(91,844)	(31,321)	(51,777)	(1,399,200)
Top Customers													
Kent Building Supplies	-	-	55,451	-	-	32,340	-	-	-	-	-	-	87,791
Walmart	-	48,750	48,750	48,750	48,750	48,750	48,750	48,750	48,750	-	-	-	390,000
Other	453,126	136,000	136,000	136,000	136,000	136,000	136,000	136,000	136,000	100,000	100,000	100,000	1,841,126
Cash Received from Customers	453,126	184,750	240,201	184,750	184,750	217,090	184,750	184,750	184,750	100,000	100,000	100,000	2,318,917
Supplier payments													
Repairs & Mtce	-	-	(2,500)	-	-	-	-	(2,500)	-	-	-	(2,500)	(7,500)
Fuel / Liquid Asphalt	-	(30,000)	-	-	-	(25,000)	-	-	-	(20,000)	-	-	(75,000)
Trucking	-	(16,250)	(16,250)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(145,000)
Utilities	-	-	-	-	(12,000)	-	-	-	(12,000)	-	-	-	(24,000)
Other	(37,320)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(48,320)
Cash Paid to Suppliers	(37,320)	(47,250)	(19,750)	(13,500)	(25,500)	(38,500)	(13,500)	(15,000)	(25,500)	(33,500)	(13,500)	(16,000)	(299,820)
Cash Paid for Insurance Prem.	-	-	(12,315)	-	-	-	(12,315)	-	-	-	-	-	(24,630)
Total Payroll Disbursements	(60,203)	(19,590)	(59,481)	-	(63,064)	(3,500)	(71,064)	-	(63,064)	(3,500)	(93,500)	(8,000)	(454,967)
Long Term Debt / Leases	(2,543)	(42,930)	(10,543)	(11,665)	(2,433)	(5,390)	(10,543)	(11,665)	(2,433)	(2,477)	(13,456)	(11,665)	(127,743)
Increase (Decrease) in Cash	353,061	74,980	128,111	159,585	93,752	169,700	77,328	157,085	93,752	50,523	(20,456)	64,335	1,411,758
Ending Balance	(1,046,139)	(971,159)	(843,047)	(683,462)	(589,710)	(420,010)	(342,682)	(185,597)	(91,844)	(31,321)	(51,777)	12,558	12,558

Exhibit F

Envirem Technologies Inc.
Summary of Cash Flows
As at August 15, 2009

	Forecast 7-Nov-09	Forecast 14-Nov-09	Forecast 21-Nov-09	Forecast 28-Nov-09	Forecast 5-Dec-09	Forecast 12-Dec-09	Forecast 19-Dec-09	Forecast 26-Dec-09	Forecast 2-Jan-10	Forecast 9-Jan-10	Forecast 16-Jan-10	Forecast 23-Jan-10	Forecast 30-Jan-10	Summary Nov 7 to Jan 30	Summary Aug 15 to Jan 30
Begin Balance	12,558	(6,876)	71,648	31,191	95,527	85,093	158,116	114,160	186,495	169,062	241,085	200,042	269,464	12,558	(1,399,200)
Top Customers															
Kent Building Supplies	-	-	-	-	-	-	-	-	-	-	-	-	-	-	87,791
Walmart	-	-	-	-	-	-	-	-	-	-	-	-	-	-	390,000
Other	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	1,300,000	3,141,126
Cash Received from Customers	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	1,300,000	3,618,917
Supplier payments															
Repairs & Mice	-	-	-	(2,500)	-	-	-	(2,500)	-	-	-	(2,500)	-	(7,500)	(15,000)
Fuel / Liquid Asphalt	-	-	(20,000)	-	-	-	(20,000)	-	-	-	(20,000)	-	-	(60,000)	(135,000)
Trucking	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(12,500)	(162,500)	(307,500)
Utilities	(12,000)	-	-	-	-	(12,000)	-	-	-	(12,000)	-	-	-	(36,000)	(60,000)
Other	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)	(13,000)	(61,320)
Cash Paid to Suppliers	(25,500)	(13,500)	(33,500)	(16,000)	(13,500)	(25,500)	(33,500)	(16,000)	(13,500)	(25,500)	(33,500)	(16,000)	(13,500)	(279,000)	(578,820)
Cash Paid for Insurance Prem.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(24,830)
Total Payroll Disbursements	(93,500)	(3,500)	(93,500)	(8,000)	(93,500)	-	(97,000)	-	(101,500)	-	(97,000)	-	(101,500)	(689,000)	(1,143,967)
Long Term Debt / Leases	(2,433)	(2,477)	(13,456)	(11,665)	(2,433)	(2,477)	(13,456)	(11,665)	(2,433)	(2,477)	(10,543)	(14,578)	(2,433)	(92,527)	(220,270)
Increase (Decrease) in Cash	(21,433)	80,523	(40,456)	64,335	(9,433)	72,023	(43,956)	72,335	(17,433)	72,023	(41,043)	69,422	(17,433)	239,473	1,651,231
Ending Balance	(6,876)	71,648	31,191	95,527	86,093	158,116	114,160	186,495	169,062	241,085	200,042	269,464	252,031	252,031	252,031

Exhibit G

Alcon Industrial Services Inc. - Machining
Summary of Cash Flows
As at August 15, 2009

Week Ended	Actual 15-Aug-09	Forecast 22-Aug-09	Forecast 29-Aug-09	Forecast 05-Sep-09	Forecast 12-Sep-09	Forecast 19-Sep-09	Forecast 26-Sep-09	Forecast 03-Oct-09	Forecast 10-Oct-09	Forecast 17-Oct-09	Forecast 24-Oct-09	Forecast 31-Oct-09	Summary Aug 15 to Oct 31
Begin Balance	(4,943,717)	(4,879,377)	(4,854,129)	(4,871,528)	(4,881,377)	(4,909,317)	(4,918,544)	(4,906,475)	(4,927,294)	(5,097,993)	(5,116,254)	(5,188,940)	(4,943,717)
Significant Customers													
Sandvik	-	-	-	-	30,206	-	-	-	-	-	-	500,000	530,206
Michelin	53,347	-	10,549	-	-	-	-	-	-	-	-	-	53,896
Orphan	50,655	50,000	50,000	50,000	-	-	49,000	-	-	-	-	-	249,655
Others	54,930	34,416	17,598	7,272	1,224	41,426	17,980	22,424	721	-	-	14,408	212,397
Cash Received from Customers	158,932	84,416	78,147	57,272	31,430	41,426	66,980	22,424	721	-	-	514,408	1,056,154
Supplier Payments	-	-	-	-	-	-	-	-	-	-	-	-	-
Repairs & Mtc	(2,015)	(1,600)	(4,100)	(4,100)	-	-	-	-	-	-	-	-	(11,815)
Fuel / Liquid Asphalt	-	(1,300)	(1,300)	(1,300)	-	-	-	-	-	-	-	-	(3,900)
Travel	-	-	(900)	-	(900)	-	-	-	-	-	-	-	(1,800)
Accommodations & Food	-	(250)	(250)	(250)	-	-	-	-	-	-	-	-	(750)
Trucking	-	(1,500)	(1,500)	(1,500)	-	-	-	-	-	-	-	-	(4,500)
Steel / Concrete	(5,395)	(10,000)	(10,000)	(10,000)	-	-	-	-	-	-	-	-	(35,395)
Consumables	(6,792)	(5,000)	(5,000)	(5,000)	-	-	-	-	-	-	-	-	(21,792)
Utilities	-	-	(2,500)	-	(13,000)	-	(2,500)	-	(10,000)	-	-	(700)	(28,700)
Subcontracting	-	(5,500)	(5,500)	-	-	-	-	-	-	-	-	-	(11,000)
Other	(5,020)	(5,500)	(5,500)	(5,500)	(10,500)	(10,500)	(10,500)	(10,500)	(10,500)	(10,500)	(7,000)	(7,000)	(98,520)
Cash Paid to Suppliers	(18,222)	(30,650)	(36,550)	(27,650)	(24,400)	(10,500)	(13,000)	(10,500)	(20,500)	(10,500)	(7,000)	(7,700)	(218,172)
Total Payroll Related Disbursements	(67,497)	(18,587)	(54,850)	(15,487)	(34,000)	(27,987)	(33,500)	(11,237)	(150,000)	-	(52,500)	-	(486,645)
Long Term Debt Paid	(7,873)	(9,931)	(4,145)	(22,983)	(971)	(278)	(4,190)	(5,094)	(402)	(273)	(4,003)	(368)	(50,510)
LTD / Leases not tied to work	-	-	-	-	-	(11,868)	(4,221)	(16,412)	(518)	(7,488)	(8,184)	(7,626)	(57,337)
Increase (Decrease) In Cash	64,340	25,248	(17,399)	(9,848)	(27,941)	(5,227)	12,069	(20,819)	(170,699)	(18,261)	(72,686)	498,714	253,491
Ending Balance	(4,879,377)	(4,854,129)	(4,871,528)	(4,881,377)	(4,909,317)	(4,918,544)	(4,906,475)	(4,927,294)	(5,097,993)	(5,116,254)	(5,188,940)	(4,590,226)	(4,590,226)

Exhibit G

Atcon Industrial Services Inc. - Machining
Summary of Cash Flows
As at August 15, 2009

Week Ended	Forecast 7-Nov-09	Forecast 14-Nov-09	Forecast 21-Nov-09	Forecast 28-Nov-09	Forecast 5-Dec-09	Forecast 12-Dec-09	Forecast 19-Dec-09	Forecast 26-Dec-09	Forecast 2-Jan-10	Forecast 9-Jan-10	Forecast 16-Jan-10	Forecast 23-Jan-10	Forecast 30-Jan-10	Summary Nov 7 to Jan 30	Summary Aug 15 to Jan 30
Begin Balance	(4,590,225)	(4,712,204)	(4,739,405)	(4,778,835)	(4,781,520)	(4,811,190)	(4,833,493)	(4,852,486)	(4,812,821)	(4,640,965)	(4,648,723)	(4,677,816)	(4,693,065)	(4,690,226)	(4,943,717)
Significant Customers															
Sandvik	-	-	-	-	-	-	-	250,000	-	-	-	-	-	250,000	780,206
Michelin	-	-	-	-	-	-	-	-	-	-	-	-	-	-	53,896
Orphan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	249,655
Others	-	-	-	14,400	-	-	-	-	-	-	-	-	-	14,400	226,797
Cash Received from Customers	-	-	-	14,400	-	-	-	250,000	-	-	-	-	-	264,400	1,320,554
Supplier Payments	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Repairs & Mctc	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(11,815)
Fuel / Liquid Asphalt	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(3,900)
Travel	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(1,800)
Accommodations & Food	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(750)
Trucking	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(4,500)
Steel / Concrete	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(35,395)
Consumables	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(21,792)
Utilities	-	(12,500)	-	-	-	(14,500)	-	-	-	-	(14,500)	-	(700)	(42,200)	(70,900)
Subcontracting	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(11,000)
Other	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(7,000)	(5,500)	(69,500)	(186,020)
Cash Paid to Suppliers	(7,000)	(19,500)	(7,000)	(7,000)	(7,000)	(21,500)	(7,000)	(7,000)	(7,000)	(7,000)	(21,500)	(7,000)	(6,200)	(131,700)	(349,872)
Total Payroll Related Disbursements	-	-	(22,500)	(6,750)	-	-	-	-	-	-	-	-	-	(29,250)	(495,895)
Long Term Debt Paid	(5,006)	(213)	(747)	(3,335)	(4,705)	(240)	(105)	(3,336)	(4,732)	(240)	(105)	(3,286)	(127)	(26,178)	(66,688)
LTD / Lenses not tied to work	(9,971)	(7,485)	(9,184)	-	(17,965)	(562)	(11,888)	-	(16,412)	(518)	(7,488)	(4,962)	(6,985)	(93,424)	(150,761)
Increase (Decrease) in Cash	(21,978)	(27,201)	(39,431)	(2,685)	(29,670)	(22,302)	(18,993)	239,664	(28,144)	(7,758)	(29,093)	(15,249)	(13,314)	(16,152)	237,338
Ending Balance	(4,712,204)	(4,739,405)	(4,778,835)	(4,781,520)	(4,811,190)	(4,833,493)	(4,852,486)	(4,612,821)	(4,640,965)	(4,648,723)	(4,677,816)	(4,693,065)	(4,706,379)	(4,706,379)	(4,706,379)

Exhibit H

Alcon Corporate Entities
Summary of Cash Flows
As at August 15, 2009

Week Ended	Actual 15-Aug-09	Forecast 22-Aug-09	Forecast 29-Aug-09	Forecast 5-Sep-09	Forecast 12-Sep-09	Forecast 19-Sep-09	Forecast 26-Sep-09	Forecast 3-Oct-09	Forecast 10-Oct-09	Forecast 17-Oct-09	Forecast 24-Oct-09	Forecast 31-Oct-09	Summary Aug 15 to Oct 31
Begin Balance	(9,654,591)	(7,694,635)	(8,905,633)	(9,110,846)	(9,411,182)	(9,919,047)	(10,104,742)	(10,443,730)	(10,883,125)	(11,174,311)	(11,385,472)	(11,731,635)	(9,654,591)
Entities													
Alcon Management	-	-	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	500,000
Alcon Holdings	36,380	-	-	-	-	-	-	-	-	-	-	-	36,380
Alcon Plywood	9,631	-	-	-	-	-	-	-	-	-	-	-	9,631
Nutrilite	1,342	-	-	-	-	-	-	-	-	-	-	-	-
Cash Received from Customers	47,353	-	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	547,353
Transfers (to) from Related Co	495,000	-	-	-	-	-	-	-	-	-	-	-	495,000
Supplier Payments													
Fuel / Liquid Asphalt	-	(3,500)	-	-	-	(3,500)	-	-	-	(3,500)	-	-	(10,500)
Utilities	-	(3,600)	(13,100)	-	-	(3,600)	(12,000)	(1,100)	-	-	(3,600)	(13,100)	(50,100)
Other	(3,389)	(5,000)	(15,000)	(16,345)	(205,000)	(5,000)	(5,000)	(16,345)	(5,000)	(30,000)	(5,000)	(11,834)	(322,912)
Cash Paid to Suppliers	(3,389)	(12,100)	(28,100)	(16,345)	(205,000)	(12,100)	(17,000)	(17,445)	(5,000)	(33,500)	(8,600)	(24,934)	(383,512)
HST / GST	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash Paid for Insurance Premiums	(7,530)	(4,866)	(2,112)	(1,890)	(12,396)	(212)	(1,890)	(1,900)	(12,396)	(212)	(1,890)	(1,900)	(49,192)
Total Payroll Related Disbursements	(437,720)	(114,869)	(169,310)	(117,243)	(176,987)	(42,204)	(176,987)	(33,243)	(167,887)	(41,284)	(167,887)	(33,243)	(1,678,821)
Long Term Debt Secured	2,000,000	-	-	-	-	-	-	-	-	-	-	-	2,000,000
Long Term Debt / Leases	(59)	(45,237)	(801)	(18,584)	(59)	(1,374)	(36,895)	(19,677)	(59)	(1,186)	(36,680)	(4,953)	(165,365)
LTD / Leases not tied to work	(97,876)	(21,110)	(3,859)	(13,835)	(2,409)	(21,110)	(3,859)	(11,500)	-	(2,409)	(24,970)	-	(202,937)
Interest Received	-	-	-	-	-	-	-	-	-	-	-	-	-
Scotiabank Interest Paid	-	(252,529)	(2,500)	(26,253)	(2,500)	(2,500)	(2,500)	(252,529)	(2,500)	(26,253)	(2,500)	(252,529)	(825,094)
Contingencies	-	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(495,000)
Payables in Arrears	-	(715,287)	(3,531)	(11,187)	(113,536)	(111,194)	(105,078)	(108,101)	(108,345)	(111,317)	(108,838)	(103,531)	(1,699,744)
Increase (Decrease) in Cash	1,959,957	(1,210,998)	(205,213)	(300,335)	(507,866)	(185,694)	(338,989)	(439,394)	(291,187)	(211,161)	(346,163)	(416,090)	(2,493,134)
Ending Balance	(7,694,635)	(8,905,633)	(9,110,846)	(9,411,182)	(9,919,047)	(10,104,742)	(10,443,730)	(10,883,125)	(11,174,311)	(11,385,472)	(11,731,635)	(12,147,725)	(12,147,725)

Exhibit H

Alcon Corporate Entities
Summary of Cash Flows
As at August 15, 2009

Week Ended	Forecast 07-Nov-09	Forecast 14-Nov-09	Forecast 21-Nov-09	Forecast 28-Nov-09	Forecast 05-Dec-09	Forecast 12-Dec-09	Forecast 19-Dec-09	Forecast 26-Dec-09	Forecast 02-Jan-10	Forecast 09-Jan-10	Forecast 16-Jan-10	Forecast 23-Jan-10	Forecast 30-Jan-10	Summary Nov 7 to Jan 30	Summary Aug 15 to Jan 30
Begin Balance	(12,147,725)	(12,497,885)	(12,762,474)	(13,152,005)	(13,615,993)	(13,983,000)	(14,245,476)	(14,635,284)	(15,097,819)	(15,444,014)	(15,664,059)	(15,086,501)	(15,538,645)	(12,147,725)	(9,654,591)
Entitles	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Alcon Management	-	-	-	-	-	-	-	-	-	-	-	-	-	-	500,000
Alcon Holdings	-	-	-	-	-	-	-	-	-	-	-	-	-	-	36,380
Alcon Plywood	-	-	-	-	-	-	-	-	-	-	-	-	-	-	9,631
Nutraceutical	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash Received from Customers	-	-	-	-	-	-	-	-	-	-	-	-	-	-	545,011
Transfers (to) from Related Co	-	-	-	-	-	-	-	-	-	-	-	-	-	-	495,000
Supplier Payments	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Fuel / Liquid Asphalt	-	(3,500)	-	-	-	(3,500)	-	-	-	(3,500)	-	-	-	(10,500)	(21,000)
Utilities	-	-	-	(4,700)	(12,000)	-	-	(1,100)	(3,600)	(12,000)	-	-	(1,100)	(34,500)	(84,600)
Other	(9,510)	(30,000)	(5,000)	(11,834)	(9,510)	(30,000)	(5,000)	(11,834)	(9,400)	(5,110)	(30,000)	(11,834)	(5,000)	(174,034)	(496,946)
Cash Paid to Suppliers	(9,510)	(33,500)	(5,000)	(16,534)	(21,510)	(33,500)	(5,000)	(12,934)	(13,000)	(20,610)	(30,000)	(11,834)	(6,100)	(219,034)	(107,546)
HST / GST	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash Paid for Insurance Premiums	-	(12,396)	(212)	(1,890)	(1,900)	(12,396)	(212)	(1,890)	(1,500)	(4,868)	(7,742)	(1,890)	(1,900)	(49,192)	(98,384)
Total Payroll Related Disbursements	(187,887)	(42,204)	(166,957)	(34,163)	(166,957)	(41,820)	(167,351)	(33,820)	(167,310)	(11,820)	(197,351)	(11,820)	(188,310)	(1,398,785)	(3,077,608)
Long Term Debt Secured	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,000,000
Long Term Debt / Leases	(14,077)	(1,098)	(37,548)	(4,935)	(14,413)	(1,098)	(37,441)	(3,893)	(5,299)	(11,496)	(37,441)	(4,102)	209	(172,633)	(337,998)
LTD / Leases not tied to work	-	(2,409)	(21,110)	(3,859)	-	(2,409)	(21,110)	(3,859)	-	-	(2,409)	(24,970)	-	(82,135)	(285,071)
Interest Received	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Scotiabank Interest Paid	(2,500)	(26,253)	(2,500)	(252,529)	(2,500)	(26,253)	(2,500)	(252,529)	(2,500)	(26,253)	(2,500)	(252,529)	(2,500)	(853,847)	(1,678,942)
Contingencies	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(45,000)	(585,000)	(1,080,000)
Payables in Arrears	(111,187)	(101,728)	(111,194)	(105,078)	(114,718)	(100,000)	(111,194)	(106,610)	(111,187)	(100,000)	(100,000)	(100,000)	(100,000)	(1,374,898)	(3,074,640)
Increase (Decrease) in Cash	(350,161)	(264,588)	(389,531)	(463,968)	(367,008)	(262,476)	(369,808)	(462,535)	(346,195)	(220,045)	(422,443)	(452,144)	(344,801)	(4,735,521)	(7,194,175)
Ending Balance	(12,497,886)	(12,762,474)	(13,152,005)	(13,615,993)	(13,983,000)	(14,245,476)	(14,635,284)	(15,097,819)	(15,444,014)	(15,664,059)	(16,086,501)	(16,538,645)	(16,883,245)	(16,883,245)	(16,848,766)

Advice for the Minister of Business New Brunswick

Atcon Group of Companies Briefing August 21, 2009

As at August 21, 2009, Atcon is indebted to the Bank of Nova Scotia ("BNS") in an amount of about \$28.5 million, with a margin security shortfall of about \$23 million.

The Company, in conjunction with Ernst & Young and the BNS, has prepared a restructuring plan, the key points of which include:

- Elimination of all non-core businesses, to concentrate on construction and metal fabrication; and
- Sale of all non-core businesses and non-core assets.


In order to allow the required time to down-size and refocus the company, the plan calls for BNS to permit the operating line of credit to increase (by \$10 million) to \$39 million by late 2009, notwithstanding that the margin security shortfall will reach about \$33 million.

The plan and accompanying cash flows indicate that the credit line will reduce to about \$25 million by January 31, 2010, and that the company will return to profitability as it focuses on its core competencies.

In order to agree to the restructuring plan, including the additional credit required, BNS is requiring that the Province ("PNB") allow BNS to have a priority position on the security held by PNB in support of its guaranteed loans. This PNB security includes the Brunway Highway Maintenance contract, and the Swedish plywood mill. The estimated value of this security is about \$33 million.

The issue for PNB is that in allowing BNS a first security position, PNB is not only securing the new \$10 million in bank advances, but is also securing the existing credit line margin shortfall of \$23 million.

BNS is adamant on this point, and has refused to consider alternate suggestions.

Exhibit #79
December 8, 2010

Blackwell Court Reporting

f 79


Consequences of Rejection

The Bank would immediately call its loans and either place all the Atcon companies in receivership or force the companies to seek court protection from creditors under CCAA.

If the companies were able to obtain Debtor in Possession ("DIP") financing in order to support a formal restructuring plan, it is likely that the courts would allow the DIP lender to rank ahead of the province in terms of security.

Immediate loss of the remaining Atcon jobs (estimated at 360)

In the event of liquidation, the province would be entitled to the proceeds from the sale of the Brunway highway Maintenance contract and the Swedish assets, however in a fire sale situation, the estimated value of \$33 million would likely drop to about \$20 million.

The \$30+ million of accounts payable would remain unpaid, and the unsecured creditors would receive nothing in liquidation.

The \$13.3 million guarantee relating to the Deh Cho Bridge project would likely be called as a result of Atcon's failure to complete the project.

In a liquidation scenario, it is probable that the province could lose as much as \$50 million of its \$71 million exposure.

Schedule "B"

Alternative Recommendations

The Bank request calls for a first charge over the Provincial security until such time as the Bank loan reaches the lesser of \$10 million or the amount of margin coverage, at which time the security would revert to the province. In the event that margin coverage was only \$5 million, the security would not be released until the BNS loan was down to \$5 million. In other words, BNS is potentially made whole through this proposal.

BNS presently has a \$20 million margin shortfall. If we are to provide the security requested, it should revert back to the province at such time as the BNS loan is down to \$15 million, regardless of margin coverage. Assuming that there would be at least \$5 million in margin coverage, BNS has improved its margin shortfall position by \$10 million.

This conversation should be held with BNS today. As an absolute minimum, the words "the lesser of" should be considered a deal breaker.

Inasmuch as the Restructuring Plan fails to address the existing accounts payable and is dependent solely upon the province giving up its security, it is probably a more acceptable option to have the company file for bankruptcy protection and attempt to get a formal restructuring plan approved by all creditors. The question is whether or not the company can find Debtor-in-Possession financing to operate under court protection.

sarah Brooke

From: Katrina Donovan [kdonovan@atcongroup.com]
Sent: Friday, September 04, 2009 9:39 AM
To: Perron, Sadie (BNB/ENB)
Cc: Watt, John (BNB/ENB)
Subject: FW: 09-04-2009.pdf
Attachments: 09-04-2009.pdf

Here is the string of correspondence with CRA

Thanks,
Katrina

From: Shannon Silliker [mailto:ssilliker@atcongroup.com]
Sent: Friday, September 04, 2009 9:30 AM
To: kdonovan@atcongroup.com
Subject: 09-04-2009.pdf

Date Feb 3/11 Exhibit # 79K
pub
Blackwell Court Reporting

August 18, 2009

Attention Heather Smith – CRA Collections

Over the years, Atcon grew its annual revenues to approximately \$255 million by expanding its service offerings and geographic marketplace. Unfortunately, the recent economic depression and global credit crunch, losses on certain contracts which arose for a variety of reasons, and straying into areas of construction outside of the Company's core competencies, have caused a significant decline in profitability and cash flow in recent years.

Atcon's continued existence requires a significant and immediate re-focusing of management's efforts and the Company's resources into areas directly linked with its core competencies. Management is committed to return to these core competencies and this high-level Preliminary Restructuring Plan (the "Plan") provides an overview of Atcon's new vision for its future operations and success. It describes the critical path Atcon will follow to achieve that success – not only for itself – but for all of its stakeholders who rely on it in so many ways.

Atcon will immediately narrow its operational focus to its core competencies, i.e., heavy civil construction in Atcon Construction Inc. and steel fabrication in Atcon Industrial Services Inc. Aggregate revenue levels are targeted to be approximately \$110 million producing gross margins of approximately 12% - 18%. Atcon will take immediate action to sell Non-Core Operations which will immediately reduce the strain on daily cash flow and each sale will provide much needed funds to improve the Company's working capital deficiency. Management is not projecting any of these sales to conclude prior to 30 January 2010 due to the time it takes to maximize value by properly preparing for, marketing and executing such sale transactions. Nevertheless it is possible that certain of them may close prior to that date.

Management has prepared cash flow projections (the "Projections") for the period 15 August 2009 through 30 January 2010 (the "Period"). The Projections reflect management's best estimate of the anticipated results of the Core Business Segments and of various operational changes designed to limit corporate spending to levels commensurate with current business activity. The Projections have been prepared on a consolidated basis and include current and or reasonably anticipated levels of contract work. The Projections indicate the BNS operating line of credit balance (the "BNS Line") as at the start of the Period, i.e., 15 August 2009, is \$29.1 million. The BNS Line is anticipated to increase and peak at \$38.5 million during the week of 12 December 2009 but reduce to \$25.0 million as at the end of the Period, i.e., 30 January 2010. These amounts are significantly outside of our current borrowing base limits, however we are hopeful that ongoing discussions with the Bank and the Province of New Brunswick will conclude in the near term such that a mutually agreeable financing resolution can be achieved.

The Atcon Group of Companies are indebted to CRA for unpaid source deductions and HST remittances of approximately \$3.1 million. Management intend to repay the CRA arrears in full prior to its year end (31 January 2010) based on the following re-payment schedule, which has been incorporated into the Projections:

▶ 5 September 2009	\$400,000
▶ 3 October 2009	\$400,000
▶ 31 October 2009	\$400,000
▶ 5 December 2009	\$400,000
▶ 2 January 2010	\$400,000
▶ 30 January 2010	\$1,100,000

In addition Management intends to remit all current payroll and HST obligations as they become due on a go forward basis as reflected in the Projections.

Ledwell Construction Labour Limited

The Company is also indebted to Ledwell Construction Labour Limited ("LCLL") for \$6.7 million (before any penalties or interest that may be assessed) in respect of underpayments on invoices for labour services provided by LCLL to Atcon Construction (the "LCLL Arrears"). The Company intends to honour its obligations to LCLL, however, due to its current financial - Sale of Envirem \$2 million situation; it cannot afford to repay both the Atcon \$3.1 million arrears as well as the LCLL Arrears of \$6.7 million prior to year end.

The Company has immediately identified a series of transactions which are likely to close within the next 18 months and perhaps within the next 6 months, the proceeds from which will partially be allocated to repay the LCLL arrears as follows:

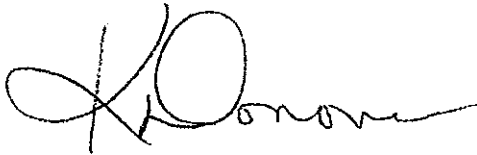
- Insurance settlement \$1 million
- Sale of quarry \$1 million
- Sale of Machine Shop \$1 million

A definitive scheduled repayment plan from other sources shall be determined on or before 28 February 2010 when a greater degree of certainty on the Atcon cash flows can be provided, to address the remaining LCLL Arrears.

We also wish to advise that the Company's obligation to LCLL may be reduced by any amounts LCLL receives from construction liens which it has filed on projects that it provided labour to Atcon. Any such lien recoveries will only be incorporated into the Company's plan to pay the LCLL Arrears if such lien recoveries are actually realized.

CRA is pressing LCLL and Atcon for payment of their respective accounts. The Company is pleased to supply CRA with the above proposal for its consideration and we look forward to discussing this with you at our meeting on Wednesday at which time a copy of the Projections will be provided.

Yours truly,

A handwritten signature in black ink, appearing to read 'K. Donovan', with a large, stylized initial 'K'.

Katrina Donovan, CA, CBV
VP Finance and Administration
Atcon Group

ATCON GROUP

JOB #536

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	STATUS
001	8/18	3:44P	506 636 5716	EC--S	00' 57"	004	OK

ATCON

626 Newcastle Blvd., Miramichi, New Brunswick, Canada E1V 2L3
Tel.: (506) 627-1222 Fax: (506) 622-8392

FAX TRANSMISSION COVER SHEET

Date: August 18, 2009

To: Heather Smith, CRA

Fax: 1-506-636-5716

From: Shannon Silliker

Telephone: 506-627-1222

Number of Pages (including cover sheet): 4

Message:

Please see the attached.

Thank you.

August 19, 2009

Canada Revenue Agency
126 Prince William Street
Saint John, NB E2L 4H9
Attention: Heather Smith, Collections Enforcement Officer

Dear Ms. Smith,

This letter is to follow up on our meeting today. We understand from our meetings today the following:

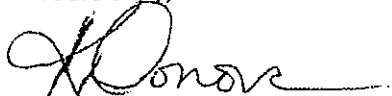
- Moving forward all returns required to be filed from today forward will be filed on time and with full payments. Zero tolerance of any deviation from this commitment will not be accepted,
- We will follow up on the filings of Dycon April 2009, Ledwell HST November 2008, AIS HST June 2009 and Envirem HST June 2009. These returns will be sent to your attention by the end of the week,
- We confirm all corporate tax returned were filed on July 31st and attached is a summary of amounts outstanding and tax losses available by company,
- A detailed list of our account receivables was provided during the meeting today at your request. We wish to confirm your undertaking that CRA will not issue any communications to our customers unless we are deemed uncooperative and/or not following the proposed plan as advised. The Company will be notified prior to any communications being released if determined necessary.
- We commit to improve communication to your office and ensure CRA is kept up to date on the restructuring plan. I will follow up with you on Tuesday to provide an update on the current restructuring plan and the current positions of the bank and the Province relating thereon,
- We will provide weekly packages to CRA with updated cash flows by division and an analysis of any significant variances from these forecasts. Attached are the divisional cash flows that support the consolidated cash flows provide and discussed with you in today's meeting,

(*)

- We acknowledge CRA has requested voluntary security to be provided and we are reviewing what security and in what form we can provide to CRA. We do not wish to force CRA to register an involuntary judgment on our companies and will work with CRA and our senior lenders to provide adequate security to CRA,
- As proposed in our correspondence dated August 18th we intend to provide to CRA a detailed plan on certain assets sales and amounts to be paid to CRA from these sales once our restructuring plan is approved by senior lenders.

If this list is not correct please advise, so we can clarify our understanding. We want to thank you and Brian for meeting with us and reviewing our restructuring plan. We also want to reiterate our commitment to resolve the outstanding arrears at this time.

Yours truly,

A handwritten signature in black ink, appearing to read 'K. Donovan', with a horizontal line extending to the right.

Katrina Donovan, CA, CBV
VP – Finance & Administration
Atcon Group Inc.

JOB #554

ATCON GROUP

DATE TIME
001 8/20 10:03A

TO/FROM

506 636 5716

MODE

EC--S

MIN/SEC

00' 37"

PGS

003

STATUS

OK

ATCON

626 Newcastle Blvd., Miramichi, New Brunswick, Canada E1V 2L3
Tel.: (506) 627-1222 Fax: (506) 622-8392

FAX TRANSMISSION COVER SHEET

Date: August 20, 2009

To: Heather Smith, CRA

Fax: 1-506-636-5716

From: Katrina Donovan

Telephone: 506-627-1222

Number of Pages (including cover sheet): 3

Message:

Please see the attached.

Thank you.

Canada Customs
and Revenue AgencyAgence des douanes
et du revenu du Canada**Fax Cover Sheet****Feuille de transmission par télécopieur**

To / À:	<u>Katrina Donovan</u>
Firm/Compagnie:	Atcon Group
City/Ville:	Miramichi
Telephone / Téléphone:	()
Fax / Télécopieur:	506-627-1676

From / De:	Heather Smith
Address / Adresse:	Canada Customs and Revenue Agency Tax Services Office 126 Prince William St Saint John NB E2L 4H9
Telephone / Téléphone:	1-(506)-636-4050 1-800-222-9629 EXTN 4050
Fax:	1-(506)-636-5716
Date:	August 26, 2009
Number of pages to follow: Nombre de pages à suivre:	1

Message:

126 rue Prince William Street
Saint John NB
E2L 4H9**Canada**

This transmission contains information that is privileged and confidential. Any dissemination, distribution, copying, or other use of this communication by anyone other than the intended recipient is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone.

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Canada Revenue
AgencyAgence du revenu
du CanadaTax Services Office
Saint John NB E2L 4H9

August 26, 2009

ATTENTION: KATRINA DONOVAN
ATCON GROUP
626 NEWCASTLE BLVD
MIRAMICHI NB E1V 2L3Account Number
86554 5909 RC0001

Dear Ms. Donovan:

This is in response to your letter dated August 19, 2009 to follow up on our meeting of the same date.

We agree that the items in your letter were the terms agreed to during that meeting. In addition, we had requested that you provide us with a copy of the company's restructuring plan once it has been finalized.

In addition to the terms mentioned in your letter and during our meeting, the Agency is also requesting that updated accounts receivable be provided to us on a monthly basis.

We would like to clarify that the Agency has not agreed to accept the proposed terms of repayment at this time as the issue of security is still outstanding and we have not yet had an opportunity to review the divisional cash flow projections or the complete details of the restructuring plan. However, in the interim, we will accept the proposed payment arrangement on the Atcon Group of companies.

Due to the situation with the related company, Ledwell Construction Labour Limited, we will deal with that company separately from the other Atcon companies.

Yours truly,

H. Smith
Collection Officer**Canada**Saint John Tax Services Office
126 Prince William Street
Saint John NB E2L 4H9Local: 506-636-4050
Toll Free: 1-800-222-9629 Ext.: 4050
Fax: 506-636-5716
Web site: www.cra.gc.ca

September 10, 2009

Mr. Purdy Crawford
Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
PO Box 50
Toronto, ON M5X 1B8

Dear Mr. Crawford:

I am writing to express my appreciation to you for your agreement to become the representative of the Province of New Brunswick on the newly formed Advisory Board to the Atcon Group of companies.

As you are aware, Atcon is facing considerable financial pressure at the current time, and is attempting to resolve these issues through an informal restructuring plan.

I am sure that your business expertise will be of invaluable assistance to Atcon through these difficulties.


Once again, thank you for volunteering your time and expertise.

I look forward to meeting with you at some time following your first Advisory Board meeting to discuss your opinions of the situation facing Atcon.

If I can be of any assistance to you, please do not hesitate to contact me.

Yours sincerely,

Victor Boudreau
Minister

Exhibit #82
December 8, 2010

Blackwell Court Reporting


82




Exhibit #87
December 8, 2010
RB
Blackwell Court Reporting

September 15, 2009

The Bank of Nova Scotia
1709 Hollis Street
Halifax, NS B3J 2M1

And

Atcon Holdings Inc. ("Atcon")
626 Newcastle Blvd.
Miramichi, NB E1V 2L3

Gentlemen:

Subject: Security priorities.

As you are aware, The Bank of Nova Scotia ("BNS") holds security over the Brunway Highway Maintenance Contract and Atcon's plywood mill in Sweden (hereinafter collectively referred to as the "Security") in support of term loans guaranteed by the Minister of Business New Brunswick ("Minister").

Atcon has submitted a Restructuring Plan which requires the support of BNS and access to additional credit from BNS.

As a condition of continuing to support Atcon through the provision of an operating line of credit (Credit Line"), and the making of additional advances under the Credit Line, BNS has requested an amendment to the priority position with respect to the Security and the Minister has agreed to amend the priority as detailed below.

BNS shall have a first priority position over the security and shall be entitled to 100% of the proceeds of realization of the Security in respect to any amounts outstanding on the Credit Line in excess of \$28,500,000.

In respect to amounts outstanding on the Credit Line between \$10,000,000 and \$28,500,000, BNS and the Minister shall each be entitled to 50% of the net proceeds of realization of the Security, and any amounts due to the Minister as a result of such realization shall be applied against the term loans guaranteed by the Minister.



At such time as the Credit Line is reduced to \$10,000,000, priority over the Security shall revert to the Minister.

It is to be agreed and understood that, in the event that the Security or any portion thereof is sold or liquidated prior to January 31, 2010, the proceeds of such sale or liquidation shall be held in trust by BNS as continuing security and not applied to the Credit Line prior to February 1, 2010.

All of the foregoing is subject to the execution of a forbearance agreement between Atcon and BNS, which agreement shall be satisfactory to the Minister, and to BNS being satisfied that suitable arrangements have been made between Atcon and its major leasing companies and between Atcon and Canada Revenue Agency to allow for the continued operation of Atcon in accordance with the Restructuring Plan.

I trust that the foregoing is satisfactory to you.

Yours truly,

A handwritten signature in dark ink, appearing to read "V. Boudreau", written in a cursive style.

Victor Boudreau
Minister

90
1B



September 22, 2009

The Bank of Nova Scotia
1709 Hollis Street, 4th floor
Halifax, NS B3J 2M1

Attention: Patricia Davis, Senior Manager

Dear Ms. Davis:

RE: Atcon Holding Inc.

Pursuant to e-mails sent to you on September 17, 2009, this letter is to confirm my agreement to a \$3,000,000 advance by The Bank of Nova Scotia to Atcon Holdings Inc. on the understanding that the proposed forbearance agreement will reflect our understanding that the Bank will continue to support the company within the limits of the Restructuring Plan, and that the advance is within the parameters of the Plan.

Yours truly,

Victor Boudreau
Minister



-1-

Execution Copy

FORBEARANCE AGREEMENT

THIS AGREEMENT is made as of the 22nd day of September, 2009.

AMONG:

ATCON HOLDINGS INC., a corporation incorporated under the laws of the Province of New Brunswick

(hereinafter called the "Borrower")

OF THE FIRST PART

-and-

THE BANK OF NOVA SCOTIA, a Canadian chartered bank

(hereinafter called the "Bank")

OF THE SECOND PART

-and-

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK, as represented by the Minister of Business New Brunswick

(hereinafter referred to as the "Minister")

OF THE THIRD PART

-and-

ATCON GROUP INC., a corporation incorporated under the laws of the Province of New Brunswick ("Group"), **ATCON CONSTRUCTION INC.**, a corporation incorporated under the laws of the Province of New Brunswick ("Construction"), **ATCON PLYWOOD INC.**, a corporation incorporated under the laws of the Province of New Brunswick ("Plywood"), **ATCON VENEER PRODUCTS INC.**, a corporation incorporated under the laws of the Province of New Brunswick

*01588/0082/1083911v14

Exhibit # 96
Date Jan 12/11
MB

Blackwell Court Reporting

-2-

("Veneer"), ATCON MANAGEMENT SERVICES INC., a corporation incorporated under the laws of the Province of New Brunswick ("Management"), ATCON PROPERTY HOLDINGS INC., a corporation incorporated under the laws of the Province of New Brunswick ("Property"), ENVIREM TECHNOLOGIES INC., a corporation incorporated under the laws of the Province of New Brunswick ("Envirem"), TRAC INDUSTRIES LTD., a corporation incorporated under the laws of the Province of New Brunswick ("Trac"), ATCON INDUSTRIAL SERVICES INC., a corporation incorporated under the laws of the Province of New Brunswick ("Industrial"), ATCON QUEBEC INC., a corporation incorporated under the laws of Canada ("Quebec"), ATCON INDUSTRIAL SERVICES QUEBEC INC., a corporation incorporated under the laws of Canada ("Quebec Industrial"), ATCON CIVIL LTD., a corporation incorporated under the laws of the Province of New Brunswick ("Civil"), ATCON LOGISTICS INC., a corporation incorporated under the laws of the Province of New Brunswick ("Logistics"), DYCON CONSTRUCTION LTD., a corporation incorporated under the laws of the Province of New Brunswick ("Dycon Construction"), and ATCON STRUCTURES INC., a corporation incorporated under the laws of the Province of New Brunswick ("Structures")

(hereinafter called the "Corporate Guarantors")

OF THE FOURTH PART

-and-

ROBERT TOZER

(hereinafter called the "Individual Guarantor")

OF THE FIFTH PART

WHEREAS:

- (a) The Borrower was granted certain credit facilities by the Bank as set out in a credit agreement between the Borrower, the Bank and the Corporate Guarantors dated as of June 30, 2009 (as now or hereafter amended, modified or restated being referred to herein as the "Credit Agreement");
- (b) As security for the said credit facilities and for other monies advanced or to be advanced in the future by the Bank to the Borrower and for all other present and future indebtedness, fees, expenses and other liabilities direct or indirect, absolute or contingent,

-3-

of the Borrower to the Bank, (collectively, the "Debts"), the Borrower granted to the Bank security over its assets;

- (c) As additional security for the Debts, the Bank holds guarantees executed by each of the Corporate Guarantors and the Individual Guarantor (the Corporate Guarantors and the Individual Guarantors sometimes herein referred to collectively as the "Guarantors");
- (d) As security for the said guarantees of the Corporate Guarantors and for monies advanced or to be advanced in the future by the Bank to the Corporate Guarantors, or any of them, and for all other present and future indebtedness, fees, expenses and other liabilities direct or indirect, absolute or contingent, of each Corporate Guarantor to the Bank, the Corporate Guarantors have granted to the Bank security over their assets;
- (e) The Minister has guaranteed payment to the Bank of certain of the Debts pursuant to three guarantees each dated June 30, 2009 and one guarantee dated May 29, 2008 (the "Ministerial Guarantees") and has been made a party hereto for the purpose of acknowledging and confirming the matters set out herein and the continuation of the Ministerial Guarantees;
- (f) The total of the principal amount of the Debts as at September 22, 2009 amounted to \$94,181,977.71, consisting of the following:

Particulars	Outstanding Principal
Operating Facility	\$28,531,394.62
Term Loan Facility A	\$583,183.09
Term Loan Facility B	\$20,000,000.00
Term Loan Facility C	\$20,000,000.00
Term Loan Facility D	\$10,000,000.00
Term Loan Facility E	\$1,690,364.00
Project Letter of Credit Facility	\$13,362,845.00
Visa Facility	\$14,191.00
Total	\$94,181,977.71

Interest accrues on the foregoing principal amounts at the rates specified from time to time in the Credit Agreement;

- (g) The Borrower is in default under the Credit Agreement in that, *inter alia*:

-4-

- i. there has been a material adverse change in the financial condition or business of the Borrower and of the Corporate Guarantors;
 - ii. it has provided the Bank with a Borrowing Base Certificate which contains representations which are incorrect in a material respect;
 - iii. the borrowings under the Operating Facility exceed the amounts permitted by the Borrowing Base calculation; and
 - iv. the Borrower and/or certain Corporate Guarantors have failed to remit harmonized sales tax and employee source deductions to Canada Revenue Agency when due and as required by law.
- (h) The Bank is entitled to demand payment of the Debts and enforce its security;
- (i) The Borrower and the Guarantors have requested that the Bank refrain from demanding payment of the Debts and enforcing its security for the period specified herein so that it may implement the August, 2009 draft restructuring plan prepared by the Borrower and the Corporate Guarantors and attached as Schedule "A" hereto (which restructuring plan as amended from time to time with the written consent of the Bank and the Minister is herein called the **"Restructuring Plan"**); and
- (j) The Bank has agreed to refrain from demanding payment of the Debts and enforcing its security for such additional time, subject to the terms and conditions contained herein;

Now therefore this Agreement witnesses that in consideration of the mutual covenants herein contained and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Borrower and each of the Guarantors acknowledge and agree that:
 - (a) the facts as set out in the recitals to this Agreement are accurate;
 - (b) each of the documents held as security for the Debts of the Borrower and as security for the liabilities of each of the Guarantors is valid and enforceable in accordance with its terms;
 - (c) each of the guarantees held by the Bank is valid and enforceable in accordance with its terms;
 - (d) the principal amounts set out in recital (f) above were owing by the Borrower on the said date and remain owing;
 - (e) the credit limit under the Operating Facility has been reduced to a maximum credit at any time of \$28,531,394.62;

-5-

- (f) except as provided in this Agreement, the Bank may demand payment of the Debts and enforce all security held by it and pursue all remedies with respect to the Debts as it may deem appropriate, without further notice; and
 - (g) except as provided in this Agreement, the Bank (either by itself or through its employees or agents) has not made any promises, nor has it taken any action or omitted to take any action, that would constitute a waiver of its rights to demand payment and enforce the security and the guarantees held by it and pursue its remedies in respect of the Debts without notice, or that would estop it from so doing.
2. Each of the Borrower and each of the Corporate Guarantors covenants and agrees with the Bank as follows:
- (a) save as required by the Restructuring Plan, it will continue to carry on its business in the normal course at all times, and all inventory, accounts receivable, equipment and other assets used in the said business shall at all times continue to be owned by it for its own account;
 - (b) it will immediately commence to implement the terms of the Restructuring Plan and it will diligently pursue all aspects of the Restructuring Plan so that all matters set out therein are completed within the timelines specified in the Restructuring Plan. Without in any manner limiting the foregoing, it will:
 - (i) immediately finalize arrangements with Canada Revenue Agency ("CRA") for the payment of arrears owed to CRA on account of source deductions for contributions pursuant to the Canada Pension Plan, *Unemployment Insurance Act* (Canada) and *Income Tax Act* (Canada), and in respect of harmonized sales tax, in the approximate aggregate amount of \$3,100,000 as provided for in the Restructuring Plan and it will make the payments to CRA on account of the said arrears in the amounts and on the dates specified in the Restructuring Plan;
 - (ii) on a go forward basis, make all remittances required to be made by it for taxes owed to federal, provincial and municipal governments, including, without limitation, monies owed in respect of source deductions for contributions pursuant to the Canada Pension Plan, *Unemployment Insurance Act* (Canada) and *Income Tax Act* (Canada), and in respect of harmonized sales tax, so that none of the Borrower or the Corporate Guarantors are at any time in default of their current obligations to CRA and so that there are no additional arrears owed to CRA other than those set out in sub-paragraph 2 (b) (i) above;
 - (iii) immediately commence to seek out purchasers for and actively market the assets specified in the Restructuring Plan as being part of Non-Core Operations so as to achieve the disposition dates set out in the Restructuring

-6-

Plan including, without limitation the disposition of the following assets by not later than the following disposition dates:

1. the shares in Envirem Technologies Inc. or its assets by not later than March 31, 2010;
2. the Borrower's interest in Brunway Highway Operation Inc. by not later than February 28, 2010;
3. Construction's leasehold quarry property at Beresford, Gloucester County, New Brunswick together with all related equipment by not later than February 28, 2010;
4. the shares in Vanerply AB or its assets by not later than July 31, 2010;
5. the corporate plane owned by Construction by not later than January 31, 2012; and
6. all excess construction and other equipment not required to support the Core Operations as set out in the Restructuring Plan by not later than February 28, 2010.

- (c) it will comply in all respects with the provisions of the Credit Agreement;
- (d) it will reimburse the Bank for all expenses that the Bank has incurred or will incur arising out of its dealings with the Borrower and the Guarantors and in the protection, preservation and enforcement of the security held by it, and the Borrower hereby authorizes and directs the Bank to debit such amounts from its operating account with the Bank from time to time;
- (e) it will cease to cause or permit its employees to incur expenses on its behalf (other than ordinary out of pocket and travel expenses) which would otherwise be proper business expenses of the Borrower or of the Corporate Guarantors and, for greater certainty, it will cease to reimburse employees for such expenses through its payroll account;
- (f) it will not direct or authorize parties with whom it contracts or for whom it performs services or furnishes goods or who are otherwise indebted to it to pay to any other party amounts which are payable to it;
- (g) it will not authorize or permit amounts owed to it to be set off against amounts owed by it to any party;
- (h) it will not use any other entity for the purpose of staffing its projects and will immediately commence to retain all such required staff as its own direct

-7-

employees except that it may continue to use Dycon, Atcon Civil and Management in the ordinary course as it has traditionally done;

- (i) it will establish an independent Advisory Board (the "Advisory Board") with members who are acceptable to both the Bank and the Minister. The first meeting of the Advisory Board shall be conducted on or before October 9, 2009;
 - (j) it will engage a Chief Restructuring Officer by not later than November 30, 2009 who is satisfactory to the Bank and who will have authority to, and be responsible for overseeing and carrying out the provisions of the Restructuring Plan;
 - (k) it will continue to deposit with the Bank promptly upon receipt all monies received from all sources whatsoever, including without limitation all cheques representing payment of the Borrower's and each Corporate Guarantor's accounts receivable;
 - (l) it hereby consents to the engagement of Ernst & Young Inc. as consultant to the Bank (the "Bank's Monitor") to monitor the affairs of the Borrower and the Corporate Guarantors on the terms set out in the consent letter annexed hereto as Schedule "B";
 - (m) it will review the ongoing implementation of the Restructuring Plan with the Bank's Monitor on an ongoing basis and keep the Bank's Monitor advised on a timely basis of its progress in implementing and concluding the Restructuring Plan and the various aspects of it;
 - (n) it will not make a proposal, or apply for, or seek relief from its creditors, under the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangement Act* or any other legislation granting relief from creditors;
3. Subject to and on the terms and conditions set out herein, the Bank agrees to refrain from demanding payment of the Debts and enforcing its rights under the security held for the Debts and the guarantees until February 1, 2010, or such other date as may be established by the Bank acting in its sole discretion.
4. The occurrence of any one or more of the following events shall constitute an event of default ("Event of Default") under this agreement:
- (a) if any representation or warranty provided to the Bank (herein or in the Credit Agreement or otherwise) by the Borrower or by any of the Guarantors was incorrect when made or becomes incorrect;
 - (b) if the Borrower fails to deliver its consolidated financial projections for the period ending January 31, 2010, and for the fiscal year ending January 31, 2011, by not later than October 7, 2009;

-8-

- (c) if the Borrower and / or the applicable Guarantor fail to deliver, in executed form, by on or before October 7, 2009, the payment deferral agreements that are contemplated by the Restructuring Plan with each of General Electric Canada Equipment Financing G.P., and Caterpillar Financial Services Limited;
- (d) if the Borrower or, as applicable, any Guarantor has failed, by on or before October 15, 2009, to enter into sales or marketing agreements with qualified firms of professionals with respect to the sale and marketing of each of the assets specifically identified in sub-sections 2 (b) (iii) 1. to 6. hereof;
- (e) if, in the Bank's sole opinion, acting reasonably, the Borrower or any Guarantor is not diligently pursuing the sale of the assets specified in the Restructuring Plan as being part of Non-Core Operations including, without limitation, the assets enumerated in sub-sections 2(b) (iii) 1. to 6. hereof;
- (f) if the Borrower and the Corporate Guarantors fail to achieve in any month at least 90% of the consolidated cash flows set out in Exhibit C of the Restructuring Plan;
- (g) if the Borrower or any Corporate Guarantor fails to discontinue any of the following Non-Core Operations specified for discontinuance in the Restructuring Plan by on or the following specified dates:
 - (i) the steel tank construction business, the pipe installation business, the steel erection business, mechanical installation business or other fixed price contracts which are not part of the Core lines of business described in the Restructuring Plan of Construction by not later than October 7, 2009; and
 - (ii) the machining business of Industrial by not later than November 13, 2009;
- (h) if Industrial fails to have its new fabrication facility enclosed by not later than December 30, 2009, at a cost not to exceed \$1,300,000.00;
- (i) if the Borrower or any of the Guarantors fails to perform or comply with any of its covenants or obligations contained in this Agreement, the Credit Agreement (save as permitted by sub-section 4 (k) below) or in any other agreement or undertaking made with the Bank;
- (j) if in the Bank's sole opinion, acting reasonably, there is any deterioration in the realizable value of any of the assets of the Borrower or of any of the Corporate Guarantors;
- (k) if an Event of Default as defined in the Credit Agreement should occur save for an Event of Default which is caused by:

-9-

- (i) the Borrower's and the Corporate Guarantors' inability to comply with the financial ratios set out in sub-sections 13.03 (a), (b) and (c) of the Credit Agreement, the compliance with which is, for the time being, waived by the Bank but subject always to the Borrower and the Corporate Guarantors complying with new financial ratios to be established by the Bank, in its discretion and acting reasonably, including revised financial ratios that the Bank will establish once it is in receipt of the consolidated financial projections of the Borrower and the Corporate Guarantors for the period ending January 31, 2010, and for the fiscal year ending January 31, 2011;
 - (ii) the Borrower and the Corporate Guarantors' being in arrears to CRA in respect of harmonized sales tax and employee source deductions; provided it is in compliance at all times with the provisions of sub-sections 2 (b) (i) and (ii) of this Agreement; and
 - (iii) the borrowings under the Operating Facility exceeding the amounts permitted by the Borrowing Base calculation during the period of the implementation of the Restructuring Plan until such time as the borrowings under the Operating Facility are in compliance with the Borrowing Base calculation, which compliance shall, in any event, occur by not later than January 31, 2010.
- (l) if, in the Bank's sole opinion, acting reasonably, the Borrower or any of the Corporate Guarantors fails to cooperate with and/or furnish information on a timely basis to the Bank's Monitor as described in subsection 2(m) hereof or otherwise in accordance with the terms of the consent letter attached hereto as Schedule B;
 - (m) if expenses which are otherwise proper business expenses of the Borrower or of any of the Corporate Guarantors are paid through the payroll account of the Borrower or any of the Corporate Guarantors by way of reimbursement to employees;
- 5. Upon the occurrence of an Event of Default ("Termination Event"), the Bank may demand payment and enforce the security and pursue all remedies that it may have in connection with the indebtedness and liabilities of the Borrower or any Guarantor as it deems appropriate, including, without limitation, the appointment, without further notice to the Borrower or to any Guarantor, of a receiver, or a receiver and manager. The Borrower and each of the Corporate Guarantors hereby consent to the appointment of any such receiver or receiver and manager.
 - 6. Prior to a Termination Event, the obligations of the Borrower and the Guarantors under the Credit Agreement shall continue to apply save and except to the extent modified hereby.

-10-

7. The Borrower and each Guarantor hereby jointly and severally release and discharge the Bank and Ernst & Young Inc. and each of its directors, officers, employees and agents, from and against all claims and demands that they may have arising to the date hereof in respect of any action or omission of the Bank or of Ernst & Young Inc. or for any other reason whatsoever.
8. The Borrower and each Guarantor hereby consent to the Bank, the Minister, and the Advisory Board providing each other with any information which each may have relating to the affairs of the Customer or any Guarantor, including its business and financial affairs, and the particulars of the indebtedness and liability of the Customer or a Guarantor to the Bank or the Minister and all security held by each therefor. Without limiting the generality of the foregoing, the Bank may share with the Minister and the Advisory Board any information contained in any report prepared by the Bank's Monitor from time to time. In addition, the Bank, the Minister and the Advisory Board may provide such information to their respective consultants and professional advisors.
9. Without prejudice to any other method of giving notice, any notice required or permitted to be given to a party other than the Bank pursuant to this Agreement shall be conclusively deemed to have been received by such party on the date following the sending of the notice by prepaid private courier to such party at his, her or its address as set out in the Credit Agreement.
10. The Bank may, in its sole discretion, waive any breach by any of the other parties hereto of any of the provisions contained in this Agreement or any default by any of the said parties in the observance or performance of any covenant or condition required to be observed or performed by them, provided that no such waiver or any other act, failure to act or omission by the Bank shall extend to or by taken in any manner to effect any subsequent breach or default or the rights of the Bank resulting therefrom.
11. The Borrower and each Guarantor each acknowledge that time is of the essence of this Agreement.
12. The Minister acknowledges the provisions of this Agreement and confirms that the Ministerial Guarantees continue in full force and effect.
13. The Borrower and each Guarantor agrees to promptly do, make, execute and deliver all such further acts, documents and instruments as the Bank may reasonably require to allow the Bank to enforce any of its rights under this Agreement and to give effect to the intention of this Agreement.
14. This Agreement shall be governed by the laws of the Province of New Brunswick and the laws of Canada applicable therein.
15. If any provision of this Agreement shall be deemed by any court of competent jurisdiction to be invalid or void, such provision shall be severed herefrom and the remaining provisions shall remain in full force and effect.

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16. This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective heirs, executors and successors.
17. This Agreement constitutes the entire agreement of the parties relating to the Bank's forbearance herein and may not be amended or modified except by written consent executed by all parties. No provision of this Agreement shall be deemed waived by any course of conduct unless such waiver is in writing and signed by all parties, specifically stating that it is intended to modify this Agreement.


Remainder of page intentionally left blank. Signature page follows


-12-


In witness whereof this Agreement has been executed, sealed and delivered by the parties hereto.

SIGNED, SEALED AND DELIVERED
in the presence of:


Witness

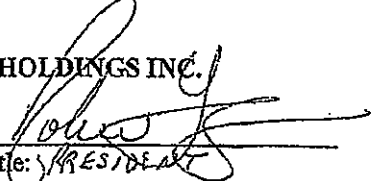

Witness


Witness


Witness

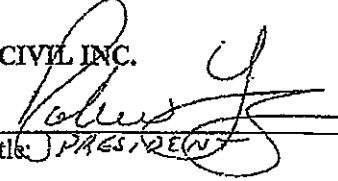

Witness

ATCON HOLDINGS INC.

Per: 
Title: PRESIDENT

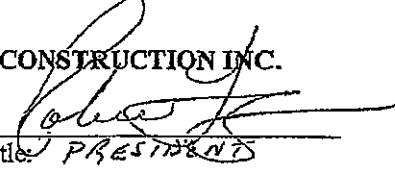
Per: _____
Title: _____

ATCON CIVIL INC.

Per: 
Title: PRESIDENT

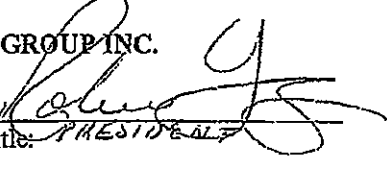
Per: _____
Title: _____

ATCON CONSTRUCTION INC.

Per: 
Title: PRESIDENT

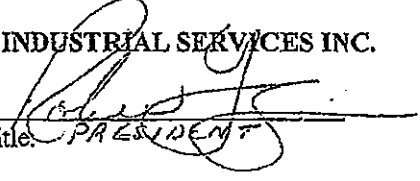
Per: _____
Title: _____

ATCON GROUP INC.

Per: 
Title: PRESIDENT

Per: _____
Title: _____

ATCON INDUSTRIAL SERVICES INC.

Per: 
Title: PRESIDENT

Per: _____
Title: _____

-13-

K. O'Connor
Witness

K. O'Connor
Witness

K. O'Connor
Witness

K. O'Connor
Witness

K. O'Connor
Witness

ATCON INDUSTRIAL SERVICES
QUEBEC INC.

Per: *[Signature]*
Title: PRESIDENT

Per: _____
Title: _____

ATCON LOGISTICS INC.

Per: *[Signature]*
Title: PRESIDENT

Per: _____
Title: _____

ATCON PLYWOOD INC.

Per: *[Signature]*
Title: PRESIDENT

Per: _____
Title: _____

ATCON QUEBEC INC.

Per: *[Signature]*
Title: PRESIDENT


Per: _____
Title: _____

ATCON VENEER PRODUCTS INC.

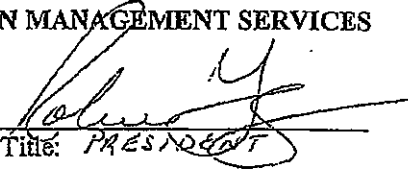
Per: *[Signature]*
Title: PRESIDENT

Per: _____
Title: _____


-14-


Witness

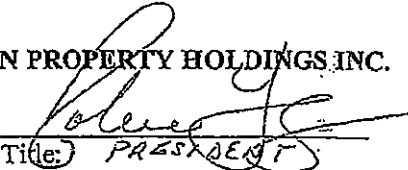
ATCON MANAGEMENT SERVICES
INC.

Per: 
Title: PRESIDENT


Per: _____
Title: _____


Witness


ATCON PROPERTY HOLDINGS INC.

Per: 
Title: PRESIDENT


Per: _____
Title: _____


Witness

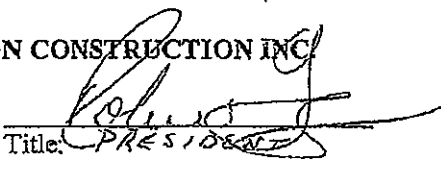
ATCON STRUCTURES INC.

Per: 
Title: PRESIDENT

Per: _____
Title: _____



Witness

DYCON CONSTRUCTION INC.


Per: 
Title: PRESIDENT


Per: _____
Title: _____


ENVIREM TECHNOLOGIES INC.


Per: 
Title: PRESIDENT


-15-


 Witness


 Witness


 Witness

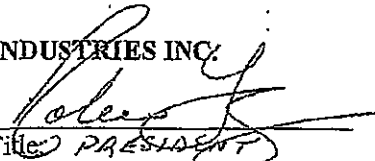

 Witness


 Witness

 Witness

Per: _____
 Title: _____

TRAC INDUSTRIES INC.

Per: 
 Title: PRESIDENT

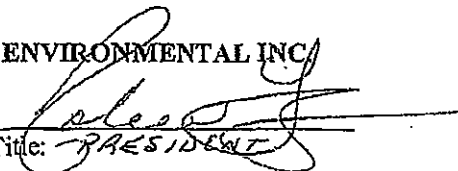
Per: _____
 Title: _____

THE BANK OF NOVA SCOTIA

Per: _____
 Title: _____

Per: _____
 Title: _____

ASPEN ENVIRONMENTAL INC.

Per: 
 Title: PRESIDENT

Per: _____
 Title: _____


 ROBERT TOZER

HER MAJESTY THE QUEEN IN
 RIGHT OF THE PROVINCE OF
 NEW BRUNSWICK as represented by
 the Minister of Business New Brunswick

Per: _____

-15-

 Witness

 Witness

 Witness

 Witness

 Witness

 Witness

Per: _____

Title: _____

TRAC INDUSTRIES INC.

Per: _____

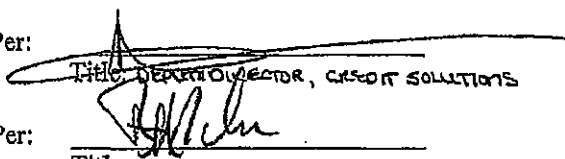
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Per: _____

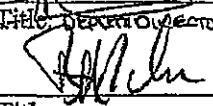
Title: _____

THE BANK OF NOVA SCOTIA

Per: _____

Title:  DEPARTMENT DIRECTOR, CREDIT SOLUTIONS

Per: _____

Title:  SENIOR MANAGER, CREDIT SOLUTIONS

ASPEN ENVIRONMENTAL INC.

Per: _____

Title: _____

Per: _____

Title: _____

ROBERT TOZER

HER MAJESTY THE QUEEN IN
 RIGHT OF THE PROVINCE OF
 NEW BRUNSWICK as represented by
 the Minister of Business New Brunswick

Per: _____

-15-

Witness

Witness

Witness

Witness

Witness

Witness

Per: _____

Title: _____

TRAC INDUSTRIES INC.

Per: _____

Title: _____

Per: _____

Title: _____

THE BANK OF NOVA SCOTIA

Per: _____

Title: _____

Per: _____

Title: _____

ASPEN ENVIRONMENTAL INC.

Per: _____

Title: _____

Per: _____

Title: _____

ROBERT TOZER

**HER MAJESTY THE QUEEN IN
RIGHT OF THE PROVINCE OF
NEW BRUNSWICK** as represented by
the Minister of Business New Brunswick

Per: _____

**Terms of Engagement Governing the Appointment
of a Chief Restructuring Officer (CRO)
of ATCON Group Inc. and related Companies
as set out in Schedule "A"
(collectively ATCON)**

The CRO:

Landers Limited will provide the services of Ross Landers to act as CRO and Ross Landers will act as CRO, using the title Executive Vice President, all on the terms and conditions set out following.

Pre-conditions to Landers Limited's and Ross Landers':

1. The CRO's appointment on the terms and conditions set out herein will be approved by director(s) resolutions of ATCON and this document signed by ATCON.
2. Each of:
 - the shareholders of ATCON Group Inc.;
 - The Province of New Brunswick ("PNB");
 - The Bank of Nova Scotia ("BNS")
 - ATCON Advisory Board ("AB") by its chairshall consent to the CRO's appointment and the terms and conditions and will sign this document signifying their consent.
(PNB, BNS and AB are sometimes herein collectively referred to as the "Stakeholders").
3. Landers Limited and Ross Landers will be provided with indemnities on terms satisfactory to them from a person satisfactory to them.
4. Landers Limited will be paid a retainer of \$50,000.

CRO's Role, Responsibility and Authority

1. The CRO shall have the authority to and responsibility for implementation of the Restructuring Plan attached as Schedule "B" as amended from time to time with the approval of the Stakeholders, (the "Plan") and not to limit the generality of the foregoing, shall have authority, subject to the direction of the AB, to:
 - plan, organize, direct and control divestiture of the Non-Core Operations and Assets as described in the Plan;
 - oversee steps taken by ATCON to maintain the operating profitability of Non-Core Operations at existing or improved levels pending completion of such divestitures;
 - review the plans and financial forecasts of ATCON's CEO in respect of the Core

597075

Exhibit # 105

Date Jan 21/11
903

Blackwell Court Reporting

Business Segments and provide advice and insight to the CEO in the CEO's management of the day-to-day operations of the Core Business Segments;

- analyze monthly and annual budgets and forecasts and implement improvements to business models as required;
- conduct financial modeling to facilitate reporting;
- manage requests for changes in terms, waivers, loans and other credit actions in respect of all creditors of ATCON; and
- negotiate settlements of ATCON receivable claims and other claims, settlement to be subject to the consent of the CEO.

2. (a) The CRO shall report on a weekly basis to the ATCON Advisory Board and shall respond to reasonable requests for information from any Stakeholder concerning implementation of the Plan and the CRO's activities.

(b) The CRO shall make recommendation to the Stakeholders as he deems appropriate for amendments to the Plan.

(c) The CRO is at liberty to disclose to the Stakeholders any and all information concerning the business and affairs of ATCON and by signing this document ATCON agrees that they will make any and all information concerning in any way their business or financial affairs available to the CRO.

3. The CRO, subject to the approval of the AB, may retain from time to time, as he considers necessary or appropriate, such agents, consultants, advisors, experts, solicitors, and hire personnel or employees on a temporary basis or otherwise, provided and notwithstanding the foregoing the retention by the CRO of the legal services of Carl Holm, Q.C. to date and as may be required from time to time in the future, to provide independent legal advise , is hereby specifically approved.. All costs incurred for the retention of agents, consultants, advisors, experts, or solicitors shall be paid by Landers Limited and form part of Landers Limited's disbursements to be paid as provided herein.

Remuneration & Payment

1. Landers Limited will invoice its fees and disbursements to ATCON weekly with payment due on the following business day. Ross Landers' time will be invoiced at a rate of \$350 an hour up to January 1, 2010, at which time the hourly rate will be subject to review and increase. Disbursements will include all expenses incurred by Landers Limited or Ross Landers, including travel and accommodation expenses.
2. If a majority of the Advisory Board members determine that the Plan has been successfully implemented, Landers Limited shall be paid a success fee equal to 20% of the total of Ross Landers professional fees plus HST.
3. The \$50,000 retainer (the "Retainer") to be paid to Landers Limited is security for the fees and disbursements of Landers Limited and Ross Landers. The Retainer may be drawn on at any time by Landers Limited to pay any unpaid fees or disbursements or to

pay professional fees invoiced to it in respect of this matter. ATCON will immediately restore the Retainer to a level of \$50,000 should it, as a result of drawings, fall below \$50,000. Landers Limited shall have a duty to account to ATCON and the Stakeholders in respect of the Retainer.

Termination

1. The appointment of the CRO may be terminated at any time by the AB.
2. Landers Limited and Ross Landers may terminate the engagement provided for herein at any time on 15 business days notice to the Stakeholders and ATCON.
3. Notwithstanding termination, Landers Limited shall be entitled to be paid and will be paid all of its fees and disbursements to the date of termination.

Subject to the pre-conditions set out herein the within terms and conditions are acceptable to Landers Limited and Ross Landers and on their acceptance and compliance with the pre-conditions Landers Limited agrees to provide the services of Ross Landers to act as CRO of ATCON and Ross Landers agrees to act as such CRO.

Dated at Halifax, Nova Scotia, this 5th day of November 2009.

LANDERS LIMITED

Per: 

President


Ross Landers

THIS INTERIM SUPPLEMENTAL PRIORITIES AGREEMENT dated as of the 31st day of October, 2009.

A M O N G:

THE BANK OF NOVA SCOTIA, a Canadian chartered bank,

(hereinafter referred to as the "**Bank**")

OF THE FIRST PART

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK, as represented by the Minister of Business New Brunswick

(hereinafter referred to as the "**Minister**")

OF THE SECOND PART;

- and -

ATCON HOLDINGS INC., ATCON GROUP INC., ATCON PLYWOOD INC., ATCON CONSTRUCTION INC., ENVIREM TECHNOLOGIES INC., TRAC INDUSTRIES LTD., ATCON VENEER PRODUCTS INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., ASPEN ENVIRONMENTAL INC., ATCON PROPERTY HOLDINGS INC., DYCON CONSTRUCTION LTD., ATCON LOGISTICS INC., ATCON INDUSTRIAL SERVICES INC., ATCON QUEBEC INC., ATCON INDUSTRIAL SERVICES QUEBEC INC., ATCON STRUCTURES INC., OPI AB ("OPI"), and VANERPLY AB ("Vanerply")

(hereinafter collectively referred to as the "**Companies**")

OF THE THIRD PART;

WHEREAS:

- (a) One or more of the Companies is indebted or liable to the Minister, and has granted security to the Minister (all of such present and future security being hereinafter referred to as the "**Minister Security**") over the real and personal property of such Companies (the "**Minister Collateral**") to secure the repayment of any such indebtedness and liability to the Minister;
- (b) The Bank has extended credit to Atcon Holdings Inc. (the "**Borrower**") pursuant to a credit agreement dated as of June 30, 2009 as may be amended, restated or replaced from time to time (the "**Credit Agreement**");

Date Jan 12/11 Exhibit # 108
[Signature]

*01588/0082/1097073v8

- (c) The Minister has guaranteed to the Bank four of the credit facilities totalling \$63,362,845.00 provided by the Bank to the Borrower under the Credit Agreement by three guarantees dated as of June 30, 2009 and a fourth guarantee dated May 29, 2008 (collectively, the **"Ministerial Guarantees"**);
- (d) The Ministerial Guarantee dated May 29, 2008 is in respect of the Project Letter of Credit Facility and is in the amount of \$13,362,845.00, and the three Ministerial Guarantees dated as of June 30, 2009 are comprised of the following:
 - (i) A Guarantee by the Minister to the Bank in respect of the Credit Agreement Term Loan Facility B in the amount of \$20,000,000.00 to assist the Borrower with the refinancing of existing subordinated debt (the **"Subordinated Debt"**) owing to Roynat Capital Inc. (**"Roynat"**) and MG Stratum Fund III Limited Partnership (**"MG"**) and assigned to the Bank (the **"Subordinated Debt Guarantee"**), in accordance with the provisions of which the Bank is to hold certain security in form and substance substantially the same as held by Roynat and MG as set out in the Subordinated Debt Guarantee (the **"Subordinated Debt Security"**);
 - (ii) A Guarantee by the Minister to the Bank in respect of the Credit Agreement Term Loan Facility C in the amount of \$20,000,000.00 (the **"Working Capital Guarantee"**), in accordance with the provisions of which the Bank is to hold certain security as set out in the Working Capital Guarantee (the **"Working Capital Security"**); and
 - (iii) A Guarantee by the Minister to the Bank in respect of the Credit Agreement Term Loan Facility D in the amount of \$10,000,000.00 (the **"Capital Expenditure Guarantee"**), in accordance with the provisions of which the Bank is to hold certain security as set out in the Capital Expenditure Guarantee (the **"Capital Expenditure Security"**);
- (e) The Bank has extended additional credit to the Borrower pursuant to a First Amendment to Credit Agreement dated as of October 31, 2009 (as the same may be amended, restated, or replaced from time to time, the **"First Amendment"**) (the Credit Agreement as amended by the First Amendment is hereinafter sometimes referred to as the **"Amended Credit Agreement"**);
- (f) Pursuant to the First Amendment, the Bank established a new Term Loan Facility E in the amount of Cdn. \$9,400,000.00 (**"Facility E"**), which Facility E is to provide working capital to the Borrower to enable the Borrower to implement the draft August 2009 restructuring plan prepared by the Customer and the other Companies, as amended from time to time with the written consent of BNS and the Minister (the **"Restructuring Plan"**), and which Facility E is to be repaid in full on or before 1 February 2010;
- (g) The Restructuring Plan, among other things, provides for the sale by Vanerply of its Mill in Sweden (the **"Swedish Mill"**), the sale by Atcon Group Inc. of all of its shares in

the capital stock of OPI (the "**OPI Shares**") and/or the sale by OPI of all of its shares in the capital stock of Vanerply (the "**Vanerply Shares**") (which Swedish Mill, OPI Shares, and Vanerply Shares are hereinafter sometimes collectively referred to as the "**Swedish Assets**");

- (h) The Restructuring Plan, among other things, provides *inter alia* for the sale and/or assignment by Atcon Construction Inc. and/or by Brun-way Highways Operations Inc of its/their interest in and of all amounts payable to it/them pursuant to the Brunway Highway Maintenance Contract;
- (i) The Bank, the Minister, the Companies, and Robert Tozer have entered into a forbearance agreement dated as of September 22, 2009 (the "**Forbearance Agreement**");
- (j) The obligations of the Borrower to the Bank under the Amended Credit Agreement have been or will be secured by security from the Borrower, together with guarantees and grants of security from the Companies other than the Borrower (collectively, the "**Bank Security**") on certain of the present and future real and personal property of the Companies including, without limitation, the Swedish Assets and Brunway Highway Maintenance Contract to secure the repayment of all indebtedness owing pursuant to the Amended Credit Agreement, which Bank Security includes the Subordinated Debt Security, Working Capital Security, and Capital Expenditure Security (hereinafter collectively the "**Guarantee Security**") which the Bank is required to hold by the Ministerial Guarantees;
- (k) The Bank, the Minister, and certain of the Companies entered into a Priorities Agreement dated as of the 30th day of June 2009 (the "**Priorities Agreement**");
- (l) The parties have entered into this Interim Supplemental Priorities Agreement (the "**Interim Priorities Agreement**") to provide for an amended priority of the Bank Security over the Minister Security to govern the realization upon certain of the Minister Security and the Bank Security for the benefit of both the Bank and the Minister; and
- (m) The capitalized terms used in this Interim Priorities Agreement have the same meaning as in the Amended Credit Agreement, except to the extent that such capitalized terms are defined herein.

THE PARTIES AGREE as follows:

1. Notwithstanding the provisions of the Priorities Agreement, this Interim Priorities Agreement shall be applicable to and deal with the priority of the Minister Security and of the Bank Security in each case in respect of the Swedish Assets and the Brunway Highway Maintenance Contract and any proceeds of disposition of such assets until the outstanding loans by the Bank to the Borrower pursuant to the Amended Credit Agreement have been reduced in the manner and sequence set out below.

2. The Minister subordinates and postpones in every respect and for all purposes whatsoever its interest in all the Minister Security in respect of the Swedish Assets and Brunway Highway Maintenance Contract to any and all Bank Security in respect of the Swedish Assets and Brunway Highway Maintenance Contract, to the extent necessary to permit the Bank to have for its sole benefit a prior charge on the Swedish Assets and the Brunway Highway Maintenance Contract and all proceeds thereof until such time as the indebtedness of the Borrower to the Bank under Facility E has been repaid in full.
3. Once the indebtedness of the Borrower to the Bank under Facility E has been repaid in full and until such time as the indebtedness of the Borrower to the Bank under the Operating Facility has been reduced from \$28,531,394.62 to \$10,000,000.00, the Minister and the Bank agree that the proceeds from any disposition of the Swedish Assets and/or the Brunway Highway Maintenance Contract shall be divided equally between the Minister and the Bank, such that the Bank shall receive and apply 50% of the net proceeds of disposition of the Swedish Assets and Brunway Highway Maintenance Contract for its benefit against the Operating Facility; and such that the Minister shall receive and apply 50% of the net proceeds of disposition of the Swedish Assets and Brunway Highway Maintenance Contract firstly against the Term Loan Facility B guaranteed by the Minister and, to the extent that the Term Loan Facility B is repaid in full, secondly to satisfy the obligations under and in respect of the Project Letter of Credit Facility guaranteed by the Minister, and thirdly in accordance with the terms of the Priorities Agreement.
4. Once the indebtedness of the Borrower to the Bank under the Operating Facility has been reduced to \$10,000,000.00 and the net proceeds of such realization have been applied in accordance with the provisions of Sections 2 and 3 above, the respective priority of the Bank Security and Minister Security shall be governed by the Priorities Agreement.
5. The parties agree that, in the event that the Swedish Assets and/or Brunway Highway Maintenance Contract or any portion thereof is sold on or before 1 February 2010, the net proceeds of such sale shall be paid to the Bank and held in trust by the Bank in a collateral cash account, to be applied on 1 February 2010 to reduce the indebtedness and liability of the Borrower to the Bank and to the Minister in accordance with the provisions of this Interim Priorities Agreement in the manner and sequence provided in Sections 2, 3, and 4 above; provided however that in the event of a default by the Companies under the Forbearance Agreement and a demand for payment by the Bank on the Borrower prior to 1 February 2010, the net proceeds of the sale of the Swedish Assets and/or the Brunway Highway Maintenance Highway Contract shall be applied by the Bank forthwith to repay Facility E and to reduce the Operating Facility, Project Letter of Credit Facility, and the Term Loan Facility B in the manner and sequence provided for in Section 2, 3, and 4 above.
6. Neither the Bank nor the Minister will (i) exercise any rights with respect to the Bank Security or Minister Security, (ii) take possession of, settle or dispose, or otherwise deal with the Swedish Assets and/or Brunway Highway Maintenance Contract, or (iii) exercise or enforce any right or remedy which may be available to the Bank or the

Minister with respect to the Swedish Assets and/or Brunway Highway Maintenance Contract, except in accordance with the priorities set out above. If any proceeds of disposition in respect of the Swedish Assets and/or Brunway Highway Maintenance Contract come into possession of either the Bank or the Minister, the Bank or Minister shall hold the same in trust for the party entitled to such proceeds of disposition in accordance with the provisions hereof and shall promptly deliver the same to such party. The Bank and the Minister expressly agree that the provisions hereof shall apply both prior to and after a demand by the Bank or the Minister on the Borrower and the other Companies, notwithstanding any other provision of the Priorities Agreement including, without limitation, the provisions thereof providing for the assignment of the Subordinated Debt Security and Capital Expenditure Security by the Bank to the Minister.

7. To the extent that any security over the Swedish Assets or the Brunway Highway Maintenance Contract is solely Minister Security or is the Subordinated Debt Security or the Capital Expenditure Security, the parties agree that such security shall be held in trust and for the benefit of each of the Minister and the Bank for all purposes of this Agreement with the intent that any proceeds of disposition of the Swedish Assets or the Brunway Highway Maintenance Contract so charged shall be applied in the manner and in the order of priority contemplated by this Agreement.
8. The Companies hereby confirm and agree with the Bank and the Minister that:
 - (a) so long as any of the indebtedness of the Companies secured by the Minister Security or the Bank Security remains outstanding, the Companies shall stand possessed of their assets so charged for the Bank and the Minister in accordance with their respective interests and priorities as herein set out; and
 - (b) none of the provisions of this Interim Priorities Agreement create any rights in favour of the Companies or affect the manner in which the Bank and the Minister or any receiver and manager appointed by them over the property, assets and undertaking of the Companies exercise their rights under the Bank Security and Minister Security.
9. In all other respects, the priority of the Minister Security and of the Bank Security shall be governed by and determined in accordance with the Priorities Agreement.
10. This Interim Priorities Agreement shall be supplemental to and read together with the Priorities Agreement, which Priorities Agreement except as amended hereby shall remain in full force and effect.
11. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and shall be effective as of the formal date hereof.

EXECUTED effective upon the day and year noted on the first page of this Agreement.

THE BANK OF NOVA SCOTIA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF NEW BRUNSWICK as
represented by the Minister of Business New
Brunswick**

By: _____
Name: _____
Title: _____

ATCON HOLDINGS INC.

By: _____
Name: _____
Title: _____

ATCON GROUP INC.

By: _____
Name: _____
Title: _____

ATCON PLYWOOD INC.

By: _____
Name: _____
Title: _____

ATCON CONSTRUCTION INC.

By: _____
Name: _____
Title: _____

ENVIREM TECHNOLOGIES INC.

By: _____
Name: _____
Title: _____

TRAC INDUSTRIES LTD.

By: _____
Name: _____
Title: _____

ATCON VENEER PRODUCTS INC.

By: _____
Name: _____
Title: _____

ATCON MANAGEMENT SERVICES INC.

By: _____
Name: _____
Title: _____

ATCON CIVIL LTD.

By: _____
Name: _____
Title: _____

ASPEN ENVIRONMENTAL INC.

By: _____
Name: _____
Title: _____

ATCON PROPERTY HOLDINGS INC.

By: _____
Name: _____
Title: _____

DYCON CONSTRUCTION LTD.

By: _____
Name: _____
Title: _____

ATCON LOGISTICS INC.

By: _____
Name: _____
Title: _____

ATCON INDUSTRIAL SERVICES INC.

By: _____
Name: _____
Title: _____

ATCON QUEBEC INC.

By: _____
Name: _____
Title: _____

ATCON INDUSTRIAL SERVICES QUEBEC INC.

By: _____
Name: _____
Title: _____

ATCON STRUCTURES INC.

By: _____
Name: _____
Title: _____

OPI AB

By: _____
Name: _____
Title: _____

VANERPLY AB

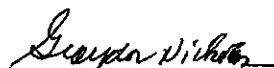
By: _____
Name: _____
Title: _____

OCTOBER 19, 2010

2010-527

Under subsection 5(1) of the Economic Development Act, the Lieutenant-Governor in Council gives his approval for the Minister of Business New Brunswick to enter into an agreement with the Government of the Northwest Territories and/or Deh Cho Bridge Corporation as appropriate, subject to the following:

- (a) payment by the Minister under the agreement shall not exceed \$13,362,845;
- (b) the agreement replaces the current Business New Brunswick guarantee amount of \$13,362,845 outstanding on the Letter of Credit for the Deh Cho Bridge project; and
- (c) the agreement shall terminate no later than six months after the rectification of Atcon Construction Inc. deficiencies.



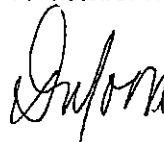
Graydon Nicholas
Lieutenant-Governor

Exhibit #
Date Jan 12/11

115

Blackwell Court Reporting

19 October 2010.



Dates of Memorandums to Executive Council (MECs)

March 18, 2008
April 22, 2008
March 13, 2009
April 9, 2009
June 2, 2009
August 10, 2009
August 31, 2009
September 10, 2009
October 10, 2009

Dates of Meetings of Executive Council and whether Shawn Graham was present

April 3, 2008	Present
May 1, 2008	Present
March 26, 2009 ✓	Present
April 23, 2009 ✓	Present
<i>June</i> January 4, 2009 ✓	Present
August 13, 2009 ✓	Present
September 2, 2009	Present
September 11, 2009	Unknown
November 5, 2009	Absent

Exhibit #
Date Jun 12/11 116
2013
Blackwell Court Reporting

ATCON ASSISTANCE AS AT NOVEMBER 22, 2010

Exhibit # 2003/11 131
 Date MB
 Blackwell Court Reporting

ARVIN SPECIAL MACHINERY

Strategic Assistance	\$347,694.87	
Total		\$347,694.87

EASTWOOD FURNITURE

Repayable Loan	136,921.81	
Interest	88,994.23	
Total		\$225,916.04

ATCON PLYWOOD

Guaranteed Loan	714,043.78	
Annual Charges	33,522.28	
Late Charges	4,713.95	
Repayable Loan	1,286,081.74	
Interest	56,600.15	
Total		\$2,094,961.90

ATCON INDUSTRIAL

Repayable Loan	3,250,000.00	
Interest	156,513.56	
Strategic Assistance	3,060,000.00	
Total		\$6,466,513.56

ATCON HOLDINGS

Defaulted Guarantee	20,000,000.00	
Defaulted Guarantee	20,000,000.00	
Defaulted Guarantee	10,000,000.00	
Total		\$50,000,000.00

Fees to Stewart McKelvey	\$ 37,313.70	
Fees to Advisory Board Members	\$ 57,431.07	
Fees to Mr. Ron Nugent	\$ 6,181.40	
		\$ 100,926.17

TOTAL		\$ 59,236,012.54
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NWT ASSISTANCE AS AT NOVEMBER 22, 2010

Outstanding advance to NWT		\$ 13,362,845.00
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GRAND TOTAL		\$ 72,598,857.54
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Beaulieu, Nicole (COI)

From: Ryan, Patrick (Hon./QC) (COI)
At: Tuesday, August 24, 2010 10:17 AM
To: Beaulieu, Nicole (COI)
Subject: FW: [Fwd: Attached Image]
Attachments: ATT00001..gif; 1050_001.pdf

EXHIBIT #
Date Apr 8/11 147
Blackwell Court Reporting

From: Mathew.M.Harris@ca.ey.com [mailto:Mathew.M.Harris@ca.ey.com]
Sent: August 24, 2010 10:03 AM
To: Ryan, Patrick (Hon./QC) (COI)
Subject: Fw: [Fwd: Attached Image]



ERNST & YOUNG

Mathew M Harris | Managing Partner - Atlantic Canada Office

Ernst & Young LLP
Phone: +1 902 421 6255 | BlackBerry: +1 902 499 0895 | Residence: +1 902 446 2432
EY/Comm: 8646285 | Mathew.M.Harris@ca.ey.com
Assistant: Tanya Landry | Phone: +1 902 421 6269

----- Forwarded by Mathew M Harris/TAS/ErnstYoung/CA on 24/08/2010 10:02 AM -----

From: Leo Persson <leo.persson@vanerply.se>
To: "Mathew.M.Harris Konkursf." <Mathew.M.Harris@ca.ey.com>
Date: 19/08/2010 02:16 AM
Subject: [Fwd: Attached Image]

Send earlier 18 Aug 2010, 7,56,42
Leo Persson

----- Ursprungligt meddelande -----

Ämne: Attached Image

Datum: Thu, 19 Aug 2010 06:02:28 GMT

Från: ekonomi <ekonomiskrivare@vanerply.se>

Till: Leo Persson <leo.persson@vanerply.se>

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// Tout conseil de fiscalité américaine contenu, le cas échéant, dans le présent courriel ne visait pas à éviter des pénalités pouvant être imposées en vertu des lois fiscales fédérales, étatiques ou locales des États-Unis, n'a pas été rédigé dans ce but et ne doit pas être utilisé à cette fin par le destinataire.

[Fwd: Vanerply capital expindature]

Ämne: [Fwd: Vanerply capital expindature]
Från: Leo Persson <leo.persson@vanerply.se>
Datum: Wed, 18 Aug 2010 07:56:42 +0200
Till: "Mathew.M.Harris Konkursf." <Mathew.M.Harris@ca.ey.com>

Daniel,
More about point 5 (Mr Graham)
Leo Persson

Ämne: Vanerply capital expindature
Från: "Alan & Connie Graham" <grahamexport@gmail.com>
Datum: Tue, 2 Feb 2010 16:57:47 -0400
Till: Leo Persson <leo.persson@vanerply.se>, Robert Tozer <rwtozer@atcongroup.com>

Leo

I had a conversation with Robbie this afternoon and as he is very involved with his company re-structuring in Canada and is occupied daily with those pressing matters
He has asked me to work with you to start the process of getting the financing in place on the terms you feel most practical

He wants to have you and Arner start getting firm prices on each of the pieces of equipment you need

Also I suggest we put together a specific time table of when each piece is to be delivered and the estimated time it will take to get it into production

Also we will require a cash flow budget and projected return on investment

In other words you have his approval to start on arranging financing and getting firm prices on equipment

I suggest you prepare a board minute to start the process

In the next week once we have all this info we will call a full board meeting to approve the ordering of equipment and the financing

In other words the project has Robbie's approval as long as we get all the details documented and in a Board minute

Please start the process and keep me informed on the progress

Good Luck

Alan

Ämne: Re: Board meeting
Från: "Alan & Connie Graham" <grahamexport@gmail.com>
Datum: Wed, 3 Feb 2010 06:53:32 -0400
Till: Leo Persson <leo.persson@vanerply.se>
Kopia: Robert Tozer <rwtozer@atcongroup.com>, Arne Carlström <arne.carlstrom@vanerply.se>, Keijo Wedin <skogsotra@vanerply.se>, Aron Högborg <aron.hogberg@vanerply.se>

Leo

That will be fine

We should not slow the process

The meeting can be held the week you are back from vacation Feb 23 or 24th

[Fwd: Vanerply capital expindature]

Arner should proceed now to get all pricing and delivery dates
Lets get all the info ready for the meeting so the project does not get delayed any further
Have a nice Holiday
Alan

On Wed, Feb 3, 2010 at 2:41 AM, Leo Persson <leo.persson@vanerply.se> wrote:

Hi all,

First of all I will tell you I have vacation during week 6 and 7. I'm back in the office February 22.

Attached is a proposal to a board meeting in the middle of March. Robbie and Alan can agree about which day best for you for the meeting.

During the time from today to the day for board meeting we shall try to get a price for the equipment (lay up, composer) and the financing. For us in Sweden we can whole week 10 and 11.

Regards,

Leo Persson

Ämne: Re: [Fwd: Re: Weekly report week 5]

Från: "Alan & Connie Graham" <grahamexport@gmail.com>

Datum: Tue, 9 Feb 2010 07:39:06 -0400

Till: Arne Carlström <arne.carlstrom@vanerply.se>

Kopia: Inger Wilsson <inger.wilsson@vanerply.se>, Robbie Tozer <rwtozer@atcongroup.com>, Leo Persson <leo.persson@vanerply.se>, Lisa Godin <lgodin@atcongroup.com>

Arne

Thanks for the Information

Lets hope it stops snowing and gets a little warmer so you will have more Steam for the dryer
Have you started to get prices on the rest of the planed modernization projects so we can discuss further when Leo returns from holidays?

Keep us informed as to any new issues as they may come up

Regards to all

Alan

On Tue, Feb 9, 2010 at 3:40 AM, Arne Carlström <arne.carlstrom@vanerply.se> wrote:

Hi Alan.

Offcourse we can run out of logs. Sodra is increasing the price fpr sawlogs with 75 Sek /m³ fast under bark from February 1. This worry me a bit. If the weather should change dramatically it should also cause us trouble. There is a lot of snow and cold weather in Sweden this year. We need to build up the inventory of logs before the snow start melting.

I don't think it should be any problem we are getting more and more logs every week now. I hope we don't have to increase the price anymore.

Dry veneer is a much bigger problem. The problem have been the weather even here the boiler can't supply the mill with as much steam we need. They have also have problems with the bark dryer out there. It have also freese in the place we store the fuel for the boiler. Because of this we

[Fwd: Vanerply capital expindature]

have to go down in speed on the dryer. We can never run the dryer on so high speed that it could keep the presses with veneer. Last week we have people from COE here looking at the lathe. So we have to run the lathe during night shift and go down on the presses. On Friday we have the press people on the roof taking away snow.

I hope this explain a little for you.

Inger Wilsson skrev:

Hej!

Skickar du svaret till hela gänget nedan och även till mig.

Inger

----- Ursprungligt meddelande -----

Ämne: Re: Weekly report week 5

Datum: Mon, 8 Feb 2010 09:03:44 -0400

Från: Alan & Connie Graham <grahamexport@gmail.com>

Till: Inger Wilsson <inger.wilsson@vanerply.se>

Kopia: robert tozer <rwtozer@atcongroup.com>, Lisa Godin <lgodin@atcongroup.com>

Hänvisar till: <4B6FE65E.6030003@vanerply.se>

Inger

Your report was good with exchange very high and selling price in Sweden above budget
However I am concerned that Log inventory is very low and you might run out of logs is that possible?

Also are you running short of dry veneer?

Is the inventory on dry veneer high enough to get a better production in the press?

Please reply when you have a chance

Alan

On Mon, Feb 8, 2010 at 6:24 AM, Inger Wilsson <inger.wilsson@vanerply.se>
<mailto:inger.wilsson@vanerply.se>> wrote:

Enclose weekly report week 5.

Regards

Inger

--

Med vänliga hälsningar

[Fwd: Vanerply capital expindature]

Arne Carlström
Produktionschef
Vänerply AB

Tel: 0551-28230
Fax: 0551-22869
Epost: arne.carlstrom@vanerply.se
Hemsida: www.vanerply.se

Ämne: Re: Daily report
Från: "Alan & Connie Graham" <grahamexport@gmail.com>
Datum: Fri, 19 Feb 2010 10:51:51 -0400
Till: Inger Wilsson <inger.wilsson@vanerply.se>
Kopia: robert tozer <rwtozer@atcongroup.com>, "Arne Carlström (E-post)" <arne.carlstrom@vanerply.se>, "Leo Persson (E-post)" <leo.persson@vanerply.se>

Inger
Your sales are down a lot this week
Is there any reason to be concerned?
Have a good weekend
Alan

On Fri, Feb 19, 2010 at 4:19 AM, Inger Wilsson <inger.wilsson@vanerply.se> wrote:
Enclose daily report for Thursday

Production dryer	336 mł
Production press	323 mł
Deliveries	185 mł

Forecast for whole week

Production press	1 765 mł
Deliveries	1 155 mł

Regards
Inger

Ämne: Re: Lay-up
Från: "Alan & Connie Graham" <grahamexport@gmail.com>
Datum: Fri, 19 Feb 2010 13:02:16 -0400
Till: Arne Carlström <arne.carlstrom@vanerply.se>

[Fwd: Vanerply capital expindature]

Kopia: Robbie Tozer <rwtozer@atcongroup.com>, Aron Högberg <aron.hogberg@vanerply.se>, Keijo Wedin <skogsotra@vanerply.se>, Leo Persson <leo.persson@vanerply.se>

Arne

Good Information

I was away at meetings all week

I will try and arrange a conference call with Robbie for Tuesday the 23rd

Have a good weekend

Alan

On Wed, Feb 17, 2010 at 5:12 AM, Arne Carlström <arne.carlstrom@vanerply.se> wrote:
Sending again Keijo haven't recived the file.

--

Med vänliga hälsningar

Arne Carlström
Produktionschef
Vänerply AB

Tel: 0551-28230

Fax: 0551-22869

Epost: arne.carlstrom@vanerply.se

Hemsida: www.vanerply.se

Ämne: Re: Daily w 08 2010.xls

Från: "Alan & Connie Graham" <grahamexport@gmail.com>

Datum: Tue, 23 Feb 2010 07:24:10 -0400

Till: Leo Persson <leo.persson@vanerply.se>

Leo

Welcome back

I hope you had a good holiday

I am trying for a conference call with Robbie to Sweden for tomorrow

Will advise later

Alan

On Tue, Feb 23, 2010 at 3:28 AM, Leo Persson <leo.persson@vanerply.se> wrote:

Daily to Monday week 08

Production on Sunday, dryer 305 m3

Production on Monday, dryer 335, press 341 m3

Deliveries 39 m3

Leo Persson

[Fwd: Vanerply capital expindature]

Ämne: Vanerply

Från: "Alan & Connie Graham" <grahamexport@gmail.com>

Datum: Thu, 25 Feb 2010 18:20:01 -0400

Till: Leo Persson <leo.persson@vanerply.se>

Leo

As you are probably aware that Atcon group in Canada has been put under Bankruptcy Protection by an application from the Bank of Nova Scotia to the courts in Canada

This is just happening today

For your information I had resigned from the Board of Vanerply on May 15th 2009

This was done by a letter I sent Robbie at that time

I had agreed to remain as a signing officer until the 2008 financials were complete and sign off on any further documents for a period of three months

But I did ask to be relieved of all directors duties at that time

As you are aware I have tried to get the new investment off the ground and started only as an outside observer and I will try and continue to convince the authorities it is the correct thing to do in investing in the mill for the long range profitability

I have always had a strong interest in the mill as it was in terrible financial shape when I became involved many year ago

Through your strong leadership the mill was turned around and now has a very profitable future as long as the new investments are made

Through your team leadership you have been able to secure a bright future for the 150 employees and the community of Otterbecken

Again I want to stress that the future is strong weather the mill operates under its present owners or new ones

Please accept my sincere thanks for a job well done

Alan

Ämne: Re: Vanerply

Från: "Alan & Connie Graham" <grahamexport@gmail.com>

Datum: Fri, 26 Feb 2010 21:06:49 -0400

Till: Leo Persson <leo.persson@vanerply.se>

Leo

I am travelling today but will get you the information on Saturday

Thanks for eveything

Alan

On Fri, Feb 26, 2010 at 7:10 AM, Leo Persson <leo.persson@vanerply.se> wrote:

Alan,

Thank you for your information. I'm really sad. One think you must help me is the namne for the

[Fwd: Vanerply capital expindature]

receiver. This is very important for me to now.
I want the whole namne and address and also the e-mail-address.
I a bad day for all of us.
Regards
Leo Persson

Alan & Connie Graham skrev:

Leo

As you are probably aware that Atcon group in Canada has been put under Bankruptcy Protection by an application from the Bank of Nova Scotia to the courts in Canada.

This is just happening today

For your information I had resigned from the Board of Vanerply on May 15th 2009

This was done by a letter I sent Robbie at that time

I had agreed to remain as a signing officer until the 2008 financials were complete and sign off on any further documents for a period of three months

But I did ask to be relieved of all directors duties at that time

As you are aware I have tried to get the new investment off the ground and started only as an outside observer and I will try and continue to convince the authorities it is the correct thing to do in investing in the mill for the long range profitability

I have always had a strong interest in the mill as it was in terrible financial shape when I became involved many year ago

Through your strong leadership the mill was turned around and now has a very profitable future as long as the new investments are made

Through your team leadership you have been able to secure a bright future for the 150 employees and the community of Otterbecken

Again I want to stress that the future is strong weather the mill operates under its present owners or new ones

Please accept my sincere thanks for a job well done

Alan

Ämne: atcon

Från: "Alan & Connie Graham" <grahamexport@gmail.com>

Datum: Sun, 28 Feb 2010 07:57:23 -0400

Till: Leo Persson <leo.persson@vanerply.se>

Leo

The Bank of Nova Scotia appointed a receiver Joe Koneckney and their lawyers are Josh McElman at the firm of Cox & Palmer in Saint John NB

[Fwd: Vanerply capital expindature]

As far as I know all seven companies are under Bankruptcy protection
There was no mention of Vanerply in any press documents
As soon as I get more information I will send it to you
Regards
Alan

Ämne: Re: Information
Från: "Alan & Connie Graham" <grahamexport@gmail.com>
Datum: Tue, 2 Mar 2010 15:40:53 -0400
Till: Leo Persson <leo.persson@vanerply.se>

Leo
Thanks for the information
Please copy me on the minutes for my information
I am still owed some old funds for board work done prior to my resignation
Do you want me to send it to you for payment?
Keep in touch
Alan

On Mon, Mar 1, 2010 at 7:09 AM, Leo Persson <leo.persson@vanerply.se> wrote:

Hi all,

I will inform all of you that we today, Monday the 1 of March 2010, have had informally board meeting in OPI AB and Vänerply AB, due to the situation regarding Bankruptcy protection in Atcon Group. If you would like to have the minutes please call me.

I have also today decided to inform the employees in Vänerply and also our bank and ourer most important suppliers and customer's

I will also inform Robbie Tozer and Alan Graham that you are still board member's in Vänerply and OPI as long as you are registered in the Swedish Patent- and Registration office (PRV). I have today check this we Kent Lindholm.

Regards

Leo Persson

Ämne: Re: Information
Från: "Alan & Connie Graham" <grahamexport@gmail.com>
Datum: Wed, 3 Mar 2010 12:36:21 -0400
Till: Leo Persson <leo.persson@vanerply.se>

Leo
Since I gave notice to Robbie of my resignation on May 15th 2009 can you also inform the Swedish Patent and Registration Office (PRV) That I am officially not a director
The main reason for this resignation is there is a conflict of my association with the Atcon Group here in Canada and I do not want it to become public that I am associated with Atcon
Please send me your phone number so we can talk directly and be assured I will help you in any

[Fwd: Vanerply capital expindature]

way

I have great pride in what Vanerply has accomplished in the years we have worked together

As a friend I am available to talk at any time

Alan

On Mon, Mär 1, 2010 at 7:09 AM, Leo Persson <leo.persson@vanerply.se> wrote:

Hi all,

I will inform all of you that we today, Monday the 1 of March 2010, have had informally board meeting in OPI AB and Vänery AB, due to the situation regarding Bankruptcy protection in Atcon Group. If you would like to have the minutes please call me.

I have also today decided to inform the employees in Vänery and also our bank and our most important suppliers and customer's

I will also inform Robbie Tozer and Alan Graham that you are still board member's in Vänery and OPI as long as you are registered in the Swedish Patent- and Registration office (PRV). I have today check this we Kent Lindholm.

Regards

Leo Persson

Ämne: Vanerply

Från: "Alan & Connie Graham" <grahamexport@gmail.com>

Datum: Wed, 3 Mar 2010 14:12:53 -0400

Till: Leo Persson <leo.persson@vanerply.se>

Leo

Are you in production this week ?

Have you had any discussions with Robbie or the receivers this week?

Let me know how things are going in Sweden

Alan

Ämne: Re: Daily w 09 2010.xls

Från: "Alan & Connie Graham" <grahamexport@gmail.com>

Datum: Thu, 4 Mar 2010 16:31:32 -0400

Till: Leo Persson <leo.persson@vanerply.se>

Leo

The receivers are Ernst & Young

You can see all the information on their web site at

www.ey.com/calatcon

Hope things are going ok for you

[Fwd: Vanerply capital expindature]

Alan

On Thu, Mar 4, 2010 at 4:32 AM, Leo Persson <leo.persson@vanerply.se> wrote:

Daily to Wednesday week 09

Production Sunday to Wednesday, dryer 1308, press 1000 m3

Deliveries same period, 689 m3

Please note that I will know who is the receiver in Atcon Group Inc.

Leo Persson

Vanerply capital expindature.eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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Re: Board meeting.eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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Re: [Fwd: Re: Weekly report week 5].eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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Re: Daily report.eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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Re: Lay-up.eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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Re: Daily w 08 2010.xls.eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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Vanerply.eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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Re: Vanerply.eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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[Fwd: Vanerply capital expindature]

atcon.eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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Re: Information.eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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Re: Information.eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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Vanerply.eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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Re: Daily w 09 2010.xls.eml	Content-Type: message/rfc822 Content-Encoding: 7bit
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Beaulieu, Nicole (COI)

EXHIBIT #
Date Apr 8/11 151
Blackwell Court Reporting
TEL: 313-44

From: Ryan, Patrick (Hon./QC) (COI)
It: Friday, October 15, 2010 12:03 PM
o: Beaulieu, Nicole (COI)
Subject: FW: Atcon
Attachments: ATT00002..gif; ~Ch59.pdf; AR-M237_20101014_161637.pdf

From: George.C.Kinsman@ca.ey.com [mailto:George.C.Kinsman@ca.ey.com]
Sent: October 15, 2010 9:52 AM
To: Ryan, Patrick (Hon./QC) (COI)
Cc: Mathew.M.Harris@ca.ey.com
Subject: Atcon

Justice Ryan,

Further to our discussion of yesterday and your list of questions attached below. Please note the additional comments identified in **BOLDED CAPS BELOW**. Please be advised that we have received no additional information from Sweden beyond what was previously provided:



George C Kinsman | Executive Director

Ernst & Young Inc.
1959 Upper Water Street, Suite 1301, Halifax, Nova Scotia B3J 3N2, Canada
Direct: 902 421-6282 | Fax: 902 420-0503 | george.c.kinsman@ca.ey.com
EY/Comm: 2554368
Website: www.ey.com
Thank you for considering the environmental impact of printing emails.

From: Mathew M Harris/TAS/ErnstYoung/CA
To: George C Kinsman/TAS/ErnstYoung/CA@EY-Canada
Date: 13/10/2010 05:25 PM
Subject: Fw: Ernst & Young

Mathew Harris
Managing Partner - Atlantic Office

From: "Ryan, Patrick (Hon./QC) (COI)" [Patrick.Ryan@gnb.ca]
Sent: 13/10/2010 11:20 AM ZW3
To: Mathew Harris
Subject: RE: Ernst & Young

Mr. Harris: On August 12th, you replied to my questions of July 23. I would appreciate an update to questions 1, 3, 4, 5, 6, 8, 9, 11 and 12. I am particularly busy with the installation of N.B.'s 20 new MLAs this week but next week, if you are available, I would like to meet with you in Halifax. PAAR

Ernst & Young Q & A
E&Y Preliminary Response
July 23, 2010

Note that much of this information will have to come from management of Vanerply/OPI and Atcon Group. We have written to the relevant officers of these entities to request that they provide answers and will forward when received

Questions for Mr. Mat Harris

1. Are there any payments in large sums by any Atcon related companies in cash? Any large sums paid that can't be accounted for legitimately? Or smaller sums paid regularly that can't be accounted for legitimately?

We have not identified any large cash payments. Enquiry of management has been made to confirm. **NO SUCH PAYMENTS HAVE BEEN IDENTIFIED**

2. What about Vanerply? OPI?

Enquiry to CEO of Vanerply initiated.

3. How far back can you trace the payments to Alan Graham, Graham Consultants or any variation indicating payments to any Graham interests?

We are in the process of initiating a search of the electronic vendor files of Atcon to identify payments to Mr. Graham. A request has also been made of Vanerply. **ATTACHED IS A LISTING OF PAYMENTS MADE TO MR. GRAHAM FROM THE ATCON COMPANIES DATING BACK TO 4 JANUARY 2005. THE LAST PAYMENT WAS ISSUED TO MR. GRAHAM ON 22 DECEMBER 2009. COPIES OF MR. GRAHAM'S LAST 6 INVOICES ARE ATTACHED**

4. How do Alan Graham's invoices describe what they are for—director's fees, consultant's fees, other?

As you are aware, the December 31, 2009 invoice to Atcon management refers to fees as an advisor to the Board of Vanerply as well as to "remain as a signing officer for Board documents". We have asked the CEO of Vanerply to provide previous invoices in the Company's possession and have asked Atcon personnel to provide any such invoices which were directed to Atcon. **SEE BELOW**

5. How were expenses and disbursements invoiced and who paid them?

Enquiry has been initiated. **SEE ATTACHED**

When did Alan Graham commence his relationship with Atcon? Did this change to Vanerply and/or OPI? **(SEE ATTACHED)**
Enquiry has been initiated.

6. Are there any contracts of engagement for services?

Enquiry has been initiated. **WE HAVE NOT BEEN ABLE TO LOCATE A SPECIFIC CONTRACT BETWEEN MR. GRAHAM AND ATCON**

9. Are there any consultant's reports by Alan Graham?

Enquiry has been initiated. **NO REPORTS HAVE BEEN IDENTIFIED**

10. Who are the principals in MG Stratum III and the McKenna Gale companies? Incorporated federally, provincially?

To the best of our knowledge these Companies are not related to Atcon or its management. We are not aware of the principals of the Companies. **INFORMATION PREVIOUSLY PROVIDED**

11. Envirem sold?

Yes

12. Status of Vanerply and OPI with respect to sale?

The Receiver continues to negotiate a possible sale with two prospective purchasers

13. What's the status of the bankruptcy today?

The Bankruptcy estate has no assets and there is no prospect for recovery by unsecured creditors.



George C Kinsman | Executive Director

Ernst & Young Inc.

1959 Upper Water Street, Suite 1301, Halifax, Nova Scotia B3J 3N2, Canada

Direct: 902 421-6282 | Fax: 902 420-0503 | george.c.kinsman@ca.ey.com

EY/Comm: 2554368

Website: www.ey.com

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Reconciled Cheques from 01-Jan-2005 3:46 pm to 14-Oct-2010 3:46 pm
for Supplier Name ***graham***

<u>Chq #</u>	<u>Status</u>	<u>Chq Date</u>	<u>vtyp</u>	<u>Vend ID</u>	<u>Supplier</u>	<u>Amount</u>	<u>Statement Date</u>
Atcon Construction Inc							
10004	10	1035230	R	19-Aug-08	12 GAS001	Graham & Associates	\$935.64 28-Aug-08
Atcon Construction Inc						<u>\$935.64</u>	

Atcon Plywood Inc.

10000	40	1567	R	4-Jan-05	12 GAS001	Graham & Associates	\$1,392.65 10-Jan-05
10000	40	1843	R	25-Jan-05	12 GAS001	Graham & Associates	\$1,415.08 7-Feb-05
10001	40	2305	R	25-Feb-05	12 GAS001	Graham & Associates	\$2,577.01 28-Mar-05
10001	40	2756	R	25-Apr-05	12 GAS001	Graham & Associates	\$2,837.62 9-May-05
10001	40	3050	R	7-Jun-05	12 GAS001	Graham & Associates	\$949.90 25-Jun-05
10001	40	3279	R	12-Jul-05	12 GAS001	Graham & Associates	\$2,452.95 30-Jul-05
10001	40	3371	R	28-Jul-05	12 GAS001	Graham & Associates	\$852.73 13-Aug-05
10001	40	3665	R	26-Sep-05	12 GAS001	Graham & Associates	\$687.12 8-Oct-05
10001	40	3784	R	20-Oct-05	12 GAS001	Graham & Associates	\$1,032.12 7-Nov-05
10001	40	4010063	R	22-Dec-05	12 GAS001	Graham & Associates	\$1,025.23 16-Jan-06
10001	40	4010138	R	12-Jan-06	12 GAS001	Graham & Associates	\$960.62 23-Jan-06
10001	40	4010375	R	8-Feb-06	12 GAS001	Graham & Associates	\$1,097.10 13-Feb-06
10001	40	4010489	R	23-Feb-06	12 GAS001	Graham & Associates	\$3,022.80 13-Mar-06
Atcon Plywood Inc.						<u>\$20,302.93</u>	

Atcon Ind. Services-Fab

10004	60	6085476	R	24-Nov-08	12 GAS001	Graham & Associates	\$0.00 1-Dec-08
10004	60	9024593	R	24-Nov-08	12 GAS001	Graham & Associates	\$1,297.24 1-Dec-08
10004	60	9024593	R	24-Nov-08	12 GAS001	Graham & Associates	(\$1,297.24) 1-Dec-08
Atcon Ind. Services-Fab						<u>\$0.00</u>	

Atcon Management Service

10004	90	4052908	R	22-Jan-07	12 GAS001	Graham & Associates	\$0.00 29-Jan-07
10004	90	4052908	R	22-Jan-07	12 GAS001	Graham & Associates	\$0.00 29-Jan-07
10000	90	9010212	R	23-Mar-06	12 GAS001	Graham & Associates	\$960.25 31-Mar-06
10000	90	9010390	R	4-May-06	12 GAS001	Graham & Associates	\$1,116.42 29-May-06
10000	90	9010462	R	24-May-06	12 GAS001	Graham & Associates	\$920.00 5-Jun-06
10004	90	9021062	R	13-Jun-06	12 GAS001	Graham & Associates	\$1,456.47 23-Jun-06
10004	90	9021187	R	12-Jul-06	12 GAS001	Graham & Associates	\$4,312.50 19-Jul-06
10004	90	9021202	R	19-Jul-06	12 GAS001	Graham & Associates	\$1,104.00 25-Jul-06
10004	90	9021300	R	22-Aug-06	12 GAS001	Graham & Associates	\$1,025.43 5-Sep-06

Reconciled Cheques from 01-Jan-2005 3:46 pm to 14-Oct-2010 3:46 pm
for Supplier Name *graham*

		<u>Chq #</u>	<u>Status</u>	<u>Chq Date</u>	<u>vtyp</u>	<u>Vend ID</u>	<u>Supplier</u>	<u>Amount</u>	<u>Statement Date</u>
10004	90	9021374	R	20-Sep-06	12	GAS001	Graham & Associates	\$1,025.43	25-Sep-06
10004	90	9021428	R	10-Oct-06	12	GAS001	Graham & Associates	\$4,275.00	23-Oct-06
10004	90	9021449	R	17-Oct-06	12	GAS001	Graham & Associates	\$1,025.43	26-Oct-06
10004	90	9021533	R	15-Nov-06	12	GAS001	Graham & Associates	\$1,663.26	23-Nov-06
10004	90	9021651	R	8-Dec-06	12	GAS001	Graham & Associates	\$1,956.24	22-Dec-06
10004	90	9021733	R	18-Jan-07	12	GAS001	Graham & Associates	\$5,563.77	1-Feb-07
10004	90	9021744	R	22-Jan-07	12	GAS001	Graham & Associates	\$0.00	29-Jan-07
10004	90	9021774	R	23-Jan-07	12	GAS001	Graham & Associates	\$0.00	29-Jan-07
10004	90	9021854	R	13-Feb-07	12	GAS001	Graham & Associates	\$1,708.29	27-Feb-07
10004	90	9021996	R	21-Mar-07	12	GAS001	Graham & Associates	\$2,945.76	20-Apr-07
10004	90	9022080	R	24-Apr-07	12	GAS001	Graham & Associates	\$5,542.68	8-May-07
10004	90	9022185	R	30-May-07	12	GAS001	Graham & Associates	\$976.35	8-Jun-07
10004	90	9022226	R	13-Jun-07	12	GAS001	Graham & Associates	\$1,660.98	25-Jun-07
10004	90	9022299	R	12-Jul-07	12	GAS001	Graham & Associates	\$5,960.90	20-Jul-07
10004	90	9022410	R	29-Aug-07	12	GAS001	Graham & Associates	\$1,318.41	17-Sep-07
10004	90	9022507	R	24-Sep-07	12	GAS001	Graham & Associates	\$1,663.26	1-Oct-07
10004	90	9022582	R	29-Oct-07	12	GAS001	Graham & Associates	\$5,949.66	13-Nov-07
10004	90	9022634	R	19-Nov-07	12	GAS001	Graham & Associates	\$2,013.81	13-Dec-07
10004	90	9022717	R	17-Dec-07	12	GAS001	Graham & Associates	\$1,664.40	31-Dec-07
10004	90	9022759	R	8-Jan-08	12	GAS001	Graham & Associates	\$1,664.40	14-Jan-08
10004	90	9022770	R	11-Jan-08	12	GAS001	Graham & Associates	\$4,275.00	19-Feb-08
10004	90	9022881	R	14-Feb-08	12	GAS001	Graham & Associates	\$1,649.80	20-Mar-08
10004	90	9022895	R	19-Feb-08	12	GAS001	Graham & Associates	\$4,643.19	20-Mar-08
10004	90	9022916	R	3-Mar-08	12	GAS001	Graham & Associates	\$1,680.31	20-Mar-08
10004	90	9023107	R	7-May-08	12	GAS001	Graham & Associates	\$4,237.50	26-May-08
10004	90	9023114	R	8-May-08	12	GAS001	Graham & Associates	\$962.76	9-Jun-08
10004	90	9023128	R	26-May-08	12	GAS001	Graham & Associates	\$962.76	9-Jun-08
10004	90	9023180	R	10-Jun-08	12	GAS001	Graham & Associates	\$2,018.18	26-Jun-08
10004	90	9023280	R	23-Jul-08	12	GAS001	Graham & Associates	\$5,907.64	18-Aug-08
10004	90	9023391	R	11-Sep-08	12	GAS001	Graham & Associates	\$2,125.27	22-Sep-08
10004	90	9023459	R	14-Oct-08	12	GAS001	Graham & Associates	\$1,342.44	27-Oct-08
10004	90	9023460	R	14-Oct-08	12	GAS001	Graham & Associates	\$4,237.50	22-Oct-08
10004	90	9024594	R	24-Nov-08	12	GAS001	Graham & Associates	\$1,297.24	16-Dec-08
10004	90	9024649	R	17-Dec-08	12	GAS001	Graham & Associates	\$1,297.24	31-Mar-09
10004	90	9024702	R	13-Jan-09	12	GAS001	Graham & Associates	\$1,297.24	14-Aug-09
10004	90	9024767	R	3-Feb-09	12	GAS001	Graham & Associates	\$4,237.50	9-Feb-09
10004	90	9026799	R	18-Feb-09	12	GAS001	Graham & Associates	\$1,297.24	28-Aug-09
10004	90	9026859	R	18-Mar-09	12	GAS001	Graham & Associates	\$1,297.24	16-Nov-09
10004	90	9026911	R	13-Apr-09	12	GAS001	Graham & Associates	\$4,237.50	8-Jun-09
10004	90	9027012	R	11-Jun-09	12	GAS001	Graham & Associates	\$2,289.38	28-Aug-09
10004	90	9027200	R	5-Oct-09	12	GAS001	Graham & Associates	\$1,105.06	18-Nov-09
10004	90	9027328	R	22-Dec-09	12	GAS001	Graham & Associates	\$4,410.39	4-Jan-10

Atton Management Service

\$116,281.48

Graham & Associates
26 Centennial Avenue West
Rexton, New Brunswick
Canada E4W 1X8
Ph: 506.523.6627 Fax: 506.523.6834

JUL 06 2009

June 30th, 2009
Invoice #: 090603

Atcon Management
626 Newcastle Blvd.
Miramichi, New Brunswick
E1V 2L3

Att: Mark Ledwell

Director's fees for the months of April, up to May 15th, 2009
including director's issues and related work with R. Tozer, G.
Engstrom and on various Vanerply projects and production
problems.

Attend to signing various documents and directors meetings as
required to finalize 2008/2009 yearend.

As per Swedish tax laws, these fees are to be billed to the
parent company and in turn Atcon will bill Vanerply.

Two trips to Miramichi 340kms @ .45	153.00
Director's fees:	\$3750.00
HST 13%	11500 — 507.39
	\$4410.39

HST# 11967-0362

90.76000

- 3,903.00

ENTERED
6/22/09

OK
mm
7/7/09

Graham & Associates
26 Centennial Avenue West
Rexton, New Brunswick
Canada E4W 1X8
Ph: 506.523.6627 Fax: 506.523.6834

August 31st, 2009
Invoice #: 090802

Atcon Group
626 Newcastle Blvd.
Miramichi, New Brunswick
E1V 2L3

Att: Gordie Burns

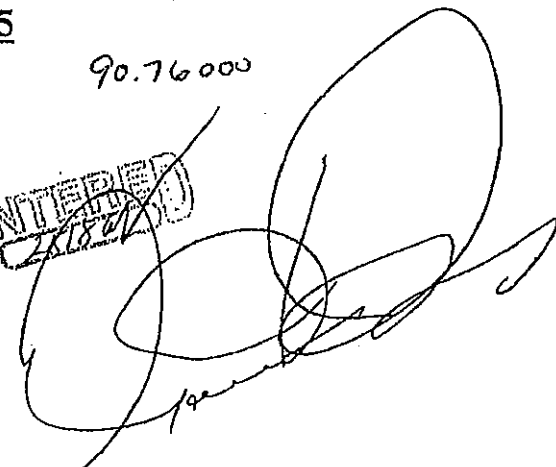
To accommodate, supply fishing equipment and guide Nathan and Tim Monk at Sq. Forks Fishing Club August 14th, 15th and 16th.

Lobster	40.00
Salmon flies, Trout Brook Fly Shop	112.68
Mr. Underhill for guiding August 16th	100.00
Gas for Mr. Underhill	40.00
Tips at Lodge	75.00
Two days at 250.00	500.00
Travel Rexton to camp & return	
<u>245kms@.45</u>	110.25
	<hr/>
	977.93
13% HST	127.13
Total	<hr/> \$1105.06

90.76000

ENTERED
EC-281822

11500



Graham & Associates
26 Centennial Avenue West
Rexton, New Brunswick
Canada E4W 1X8
Ph: 506.523.6627 Fax: 506.523.6834

June 1st, 2009
Invoice #: 090505

Atcon Management
Atcon Group
626 Newcastle Blvd.
Miramichi, New Brunswick
E1V 2L3

RECEIVED
JUN 5 2009

Att: Robbie Tozer

Discussions with Robbie, Gordie, Katrina, Bob and Dorothy on various issues and opportunities for the months of April and May including issues relating to Vanerply.

Retainer for April, 4 wks (all companies) @ 200.00/wk	800.00
Retainer for May, 4 wks (all companies) @ 200.00/wk	800.00
One day @ 250.00	250.00
Mileage 340kms @ .40	136.00
Phone calls and faxes	40.00

	90.76000	\$2026.00
HST		263.38
Total Invoice		\$2289.38

HST# 11967-0362

25693.00
RECEIVED
JUN 3 2009

[Handwritten signature]

APR 03 2009

GRAHAM & ASSOCIATES
26 Centennial Ave. West
Rexton, N.B.
Canada E4W 1X8
Ph: 506-523-6627 Fax: 506-523-6834
E-Mail: grahamexport@gmail.com

March 31st, 2009
Invoice# 090302

Atcon Management
626 Newcastle Blvd.
Miramichi, NB
E1V 2L3

Att: Mark Ledwell

Director's fees for the months of January, February and March 2009 including director's issues and related work with R. Tozer, G. Engstrom and on various Vanerply projects and production problems.

Attend to signing various documents, and directors meetings as required.

As per Swedish tax laws, these fees are to be billed to the Canadian parent company and in turn Atcon will bill Vanerply.

Director's fees	(3-Months)	\$3750.00
HST 13%		487.50
		<hr/>
	Total invoice	\$4237.50

90.76000

HST# 11967-0362

OK
4/7/09

Graham & Associates
26 Centennial Avenue West
Rexton, New Brunswick
Canada E4W 1X8
Ph: 506.523.6627 Fax: 506.523.6834

February 28th, 2009
Invoice #: 090202

Atcon Group
626 Newcastle Blvd.
Miramichi, New Brunswick
E1V 2L3

Att: Robbie Tozer

Discussions with Robbie, Gordie, Katrina, JD and Dorothy on various issues and opportunities for the month of February including issues relating to Vanerply.

Retainer 4 weeks (all companies) @ 200.00/wk	800.00
One day @ 250.00	250.00
Mileage 170kms @ .40	68.00
Phone calls and faxes	30.00
	<hr/>
	\$1148.00
13% HST	149.24

Total Invoice

\$1297.24

HST# 11967-0362

90.76000

11500

2581



Graham & Associates
26 Centennial Avenue West
Rexton, New Brunswick
Canada E4W 1X8
Ph: 506.523.6627 Fax: 506.523.6834

January 31st, 2009

Invoice #: 090102

Atcon Group *Atcon Management*
626 Newcastle Blvd.
Miramichi, New Brunswick
E1V 2L3

Att: Robbie Tozer

Discussions with Robbie, Gordie, Katrina, JD and Dorothy on various issues and opportunities for the month of January, including issues relating to Vanerply.

Retainer 4 weeks (all companies) @ 200.00/wk	800.00
One day @ 250.00	250.00
Mileage 170kms @ .40	68.00
Phone calls and faxes	30.00

13% HST

90.76000

\$1148.00

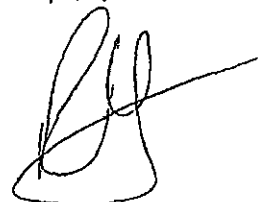
11500 **149.24**

Total Invoice

\$1297.24

HST# 11967-0362

ENTERED
25-1-09





Government
of Canada

Gouvernement
du Canada

**Ethical Guidelines
for Public Office Holders**

and

**Guidelines for the Political Activities of
Public Office Holders**

**Lignes directrices en matière d'éthique à
l'intention des titulaires de charge publique
et**

**Lignes directrices régissant les activités
politiques des titulaires de charge publique**

CERTIFICATION DOCUMENT

DOCUMENT D'ATTESTATION

I, the undersigned, certify that I shall
observe the *Ethical Guidelines for Public
Office Holders* and the *Guidelines for the
Political Activities of Public Office
Holders* as a condition of my holding office
in the Government of Canada.

Je, soussigné(e), atteste que je m'engage à
observer les *Lignes directrices en matière
d'éthique à l'intention des titulaires de
charge publique* et les *Lignes directrices
régissant les activités politiques des titulaires
de charge publique* comme condition
d'exercice de mon mandat au sein du
Gouvernement du Canada.

2009/11/27
Date
Y/A-M/M-D/J

[Signature]
Name/Nom
Alan R. Graham

[Signature]
Signature

For more information, you may contact the Senior
Personnel and Special Projects Secretariat, Privy
Council Office at (613) 957-5330.

Veuillez vous adresser au secrétariat du Personnel
supérieur et des Projets spéciaux, Bureau du Conseil
privé au (613) 957-5330 pour tout complément
d'information.

Blackwell Court Reporting

Exhibit #
Date May 25/11 154

JAN 07 2009

Graham & Associates
26 Centennial Avenue West
Rexton, New Brunswick
Canada E4W 1X8
Ph: 506.523.6627 Fax: 506.523.6834

December 31st, 2009 —
Invoice #: 091201

Atcon Management
626 Newcastle Blvd.
Miramichi, New Brunswick
E1V 2L3

Att: Robbie Tozer


**To remain as an advisor to the Board of Vanerply AB and to
provide advice on daily operations and review of ongoing
activities.**

To also remain as a signing officer for Board documents.

Quarter year fee, July 1st 2009- September 30th 2009

Director's fees:	(3-months)	\$3750.00
HST 13%		487.50
		\$4237.50

HST # 11967-0362



Date Sept 26/11 Exhibit # 157

Blackwell Court Reporting

**Graham & Associates
26 Centennial Avenue West
Rexton, New Brunswick
Canada E4W 1X8
Ph: 506.523.6627 Fax: 506.523.6834**

Jan. 07 2009

**December 31st, 2009 —
Invoice #: 091202**

**Atcon Management
626 Newcastle Blvd.
Miramichi, New Brunswick
E1V 2L3**

Att: Robbie Tozer

**To remain as an advisor to the Board of Vanerply AB and to
provide advice on daily operations and review of ongoing
activities.**

To also remain as a signing officer for Board documents.

Quarter year fee, October 1st 2009 - December 31st 2009

Director's fees:	(3-months)	\$3750.00
HST 13%		487.50
		<u>\$4237.50</u>

HST # 11967-0362

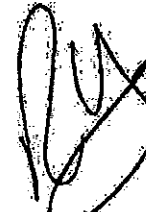


Exhibit #
Date *Sept 26/11* **158**
MB

Blackwell Court Reporting

IN THE MATTER OF THE *MEMBERS' CONFLICT OF INTEREST ACT*,
S.N.B. 1999, c. -7.01

AND IN THE MATTER OF THE *INQUIRIES ACT*, R.S.N.B. 1973, C-
I-II, S.4

AND IN THE MATTER OF AN INVESTIGATION AND INQUIRY of an
alleged breach of Section 4 of the *Members' Conflict of
Interest Act* by Shawn Graham, a member of the Executive
Council in participating in Cabinet approvals of
guarantees to a Canadian financial institution in favour
of Atcon Holdings Inc. while his father, Alan Graham, was
a paid director and consultant to the Acton group of
companies or a subsidiary thereof.

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Mr. Graham by Mr. Whitehead

1 leadership of the Liberal Party, which I was able
2 to attain. In 2003 I came within 18 votes of, of
3 defeating the one-term government, but it gave me
4 an opportunity in that election to mature our
5 team and mature to the 2006 date when I became
6 Premier of the Province of New Brunswick in that
7 subsequent election.

8 Q. Now, I want to take you, first of all, to discuss
9 a bit about Robbie Tozer. How long have you
10 known Mr. Tozer and in what capacity?

11 A. Robbie Tozer, I became acquainted with... My
12 brother, Andrew Graham, had worked for the
13 company for a number of years in the road
14 building, construction side. I first came to
15 know Mr. Tozer in the early 2000s, around 2000,
16 2001, I think, when my brother began work with
17 him at around that time.

18 Q. Okay. And what about your father, did he have a
19 relationship with Mr. Tozer?

20 A. He worked for Mr. Tozer, following his
21 retirement in 1998 from public office, for a
22 number of years working in the plywood mill in
23 Sweden because I recall that he would be out of
24 the country on numerous occasions when he was

Mr. Graham by Mr. Whitehead

1 travelling abroad.

2 Q. Okay, well, I'll go into that in a little bit
3 more detail later. But what group of companies
4 did Mr. Tozer own, to your knowledge?

5 A. The information that I was aware of was
6 around the road building side with the work that
7 my brother did with him in the road building
8 side.

9 Q. And what was the name of that company?

10 A. The Atcon Group of Companies.

11 Q. You say he was primarily involved in
12 construction. What, what kind of construction?
13 Road?

14 A. When my brother first started working for Mr.
15 Tozer, I was aware of, you know, of, of the work
16 that he did on bidding on jobs throughout the
17 province. I know that, as well, Mr. Tozer, from
18 what I read in the papers at the time, was
19 involved in constructing a bridge in the
20 Miramichi under... in the 1980s, but it was very
21 limited to the scope of involvement that I knew
22 what Mr. Tozer undertook. I know that he had...
23 Sweden because I recall that he would be out of
24 the country on numerous occasions when he was

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Mr. Graham by Mr. Whitehead

1 shared risk and, unfortunately though in the
2 business environment that we work in, not every
3 company succeeds.

4 Q. I'm going to shift gears a little bit, Mr.
5 Graham, to, to your father. What working
6 relationship were you aware that your father had
7 with Robbie Tozer and, and when did you first
8 become aware that he had a working relationship?

9 A. Well, early after my father's retirement in
10 1998 -- it was baptism by fire becoming the new
11 MLA for Kent. I was just getting my feet
12 underneath myself, but I was aware that he was
13 outside of the province and outside of the
14 country a, a great deal in Sweden, actually, the
15 majority of the time, working for Mr. Tozer with
16 an asset that he owned in Sweden, which was a
17 veneer plywood mill.

18 Q. Okay. And did you know the name of that plywood
19 mill?

20 A. Vanerply...

21 Q. Okay.

22 A. ... is the name of the organization.

23 Q. And, and when about did he start with that? Do
24 you recall that?

Mr. Graham by Mr. Whitehead

1 A. I don't recall the exact dates, but I just
2 recall that he'd be out of the province a
3 significant amount of time when he was in Sweden.

4 Q. What, if any, expertise did your father have in
5 that area?

6 A. He had a great deal of expertise, and I don't
7 need to get into that detail today, but he, you
8 know, he had been a successful businessperson for
9 a number of years and this was a turn-around
10 operation which he was working on trying to get
11 this mill profitable again.

12 Q. What, if any, knowledge did you have of his exact
13 duties?

14 A. To be honest, when he started work there, I,
15 I knew that he was working on the operation on,
16 on seeing the turnaround. It's my understanding
17 that he was a, a director of the company, but
18 that was the extent of it.

19 Q. And who, who did you know owned Vanerply?

20 A. Robbie Tozer, the owner of the Atcon Group.

21 Q. What knowledge did you have at any point in time
22 of what your father's remuneration was for acting
23 as a director of Vanerply?

24 A. I, I didn't have any knowledge of his

Mr. Graham by Mr. Whitehead

1 remuneration.

2 Q. Did you ever have any discussions about it?

3 A. No, I, I, mean, we... It might be a little
4 chance to elaborate a little bit. In, in 2002,
5 when I asked, you know, my wife what her opinion
6 was on seeking the leadership of the Liberal
7 Party, it was a pretty big jump from being an MLA
8 for Kent and, you know, her first statement was,
9 "Well, we better see what your family thinks."
10 and I remember we had the discussion around the
11 Christmas table that... in 2001, actually, at
12 Christmas, on... there was a lot of pressure on
13 me to run so we had the vote around the table
14 'cause my dad is still a great believer in the
15 fundamentals of democracy, and I think there was
16 15 of us at the Christmas table and the vote was
17 13 for me to run and two against. Now, that
18 would be my mother and my aunt, who, who
19 recognized the challenges I was in store for.
20 But at, you know, at that point in time in 2002,
21 my, my parents, both of them, did help in me
22 securing the, the leadership of the party. They
23 provided some, some assistance throughout the
24 province and provided guidance. However, it was

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Mr. Graham by Mr. Whitehead

1 involved with the Atcon Group.

2 Q. What relationship were you aware of that your
3 father had with Robbie Tozer outside of, of
4 working for him or being a director or... to your
5 knowledge?

6 A. The only information that I had, I knew that,
7 that they had been involved in a fishing club on
8 the Miramichi that I saw some information that
9 you had provided to me on the Square Forks
10 Fishing Club, but that... I was only made aware
11 of that information when it was recently
12 presented to me in the information that you
13 showed that he was a member of that club, as
14 well. But at that time, there was no
15 information.

16 Q. Was he... How would you describe the relationship
17 other than their business? Were they friends?

18 A. Well, I think they, you know, they had
19 been... my father knew Robbie Tozer for a number
20 of years when he was Minister of Natural
21 Resources. They had developed a friendship at
22 that time when he was looking at establishing
23 the, the Nelson Forest Products Mill in the
24 Miramichi. That was... that used to be the old

Mr. Graham by Mr. Whitehead

1 Burchill mill that everyone said couldn't turn a
2 profit. Robbie went in and was successful in
3 turning a small profit on that operation for, for
4 a period of time, and that's where the
5 acquaintanceship... the, the... that's where the
6 acquaintanceship was started.

7 Q. After the granting of the \$50 million guarantee
8 in, I think it was March of 2009, when did the
9 allegations start about your connection, Alan
10 Graham's connection, I should say, with the Atcon
11 Group?

12 A. Well, you have to remember that we were
13 getting ready to, to go into a provincial
14 election, so there was, you know, heightened
15 aware... heightened political awareness and
16 sensitivities around, around that time. So it
17 was in the Legislature that the opposition made
18 an allegation at that time that there could be a
19 potential conflict, which we first became aware
20 of.

21 Q. Okay. And how did you... how did you handle
22 that? What, what procedure...

23 A. Well, following the Question Period that day
24 it was important that we received the

Re: Project 13 & 14: Sale of Press and Saw Line at Skinnska...

odd years ago, and they even placed a bid. Perhaps we can contact them again and see if they are still interested? Please revert with their contact details, and I will see what can be done.

Paul

Ämne: Re: Sale press
Från: "Alan & Connie Graham" <grahamexport@gmail.com>
Datum: Thu, 5 Jun 2008 09:14:39 -0300
Till: "Leo Persson" <leo.persson@vanerply.se>

Leo

Sorry if I sounded a little impatient on the issue but it is important to get rid of the press now as we will have to get it out of the plant this year

As for Paul I appreciate the effort he has been providing but he must work harder to get it moved

Please keep me posted

Regards

Alan

On Fri, May 30, 2008 at 10:59 AM, Leo Persson <leo.persson@vanerply.se> wrote:

You have got the answer from Paul regarding the press. Alan, I'm little surprised for second e-mail to Paul. Both Paul and I would like to sell the press, no question about that.

Paul still in the payroll and I give him some time to look after other employment. If not we have to reduce him and he know that.

Have a need week-end

Leo Persson

Alan & Connie Graham skrev:

Leo

Can you give me an update on the sale of the press at Swedlam? We will have to get it moved this summer and the sale directly is the preferable way to go

Gerald needs the space where it is and is getting very impatient at the slowness we are moving

Have you got an answer for me on whether the Swedish Development Crop can finance it if it is sold out of the country?

Also what is status of Paul is he still on payroll or have you given him his notice to look for other employment?

We discussed these issues back in January when I was in Sweden and I would like follow up for Robbie

Please advise

Alan

Ämne: Re: Project 13 & 14: Sale of Press and Saw Line at Skinnskatteberg - Mälarp/ly/Swedlam
Från: "Alan & Connie Graham" <grahamexport@gmail.com>
Datum: Fri, 13 Jun 2008 11:11:33 -0300
Till: "Paul Melin" <paul.melin@vanerply.se>
Kopia: leo.persson@vanerply.se, rwtozer@atcongroup.com

Paul

As long as we are sincere in making an effort to move the press I feel Gerald will let us have a few months but they will not wait for a year to see action

Keep me posted on the success

Alan

On Wed, Jun 11, 2008 at 4:08 AM, Paul Melin <paul.melin@vanerply.se> wrote:

Alan

Just in case we are not able to close a deal with one of the current crop of speculative buyers in any very near future: I am currently looking at alternative warehousing for the press and saw line in the local area of Skinnskatteberg, through Systemair's Ronnie Hedlund (my main contact there).

Re: Graham & Associates Invoices

Ämne: Re: Graham & Associates Invoices

Från: Leo Persson <leo.persson@vanerply.se>

Datum: Tue, 12 Jan 2010 09:11:45 +0100

Till: c.cassidy@atcongroup.com

0.

Cindy,

It's has been agreed for a couple of years that Alan should invoicing Atcon for the cost and should be including in the managamente fees as Väneryply have. Why we changed this what both Alan and Väneryply can be in trouble with the tax auditor.

We can't book this invoice in Väneryply because it's adresssed to Atcon. What means with "HST 13%" ?

Leo Persson

Cindy Cassidy skrev:

Leo,

As per Robbie Tozer, please pay the attached two invoices for Alan Graham.

Thank you,

Cindy



Andrew Gamble & Associates
14 Mitchell Drive, Yellowknife, NT, Canada X1A 2H5

By Email

Mr. Robbie Tozer, President
Atcon Construction
rwtozer@atcongroup.com
Fax: 506-622-8392

November 13, 2009

Dear Mr. Tozer;

Deh Cho Bridge – Superstructure and Deck

Our letter of May 24, 2009 (copy attached) formally confirmed our earlier notice to Atcon Construction to suspend work on the superstructure and deck of the Deh Cho Bridge until further notice. It is our view that this constituted suspension of the work in accordance with Contract General Condition GC40.1 due to conditions '*unfavourable for the prosecution*' of the work.

GC40.9 states that, for a suspension exceeding 30 days, performance of the work shall be resumed subject to terms and conditions agreed by the Corporation and the Contractor. It is our hope that the Corporation and Atcon can agree on such terms and conditions.

GC40.10 further contemplates that if the parties cannot agree, the contract shall be deemed to be terminated. GC41.1 also provides that the Corporation may terminate the Contract at any time.

We have provided revised 60% design drawings. Draft revised specifications and 100% truss design drawings should be available within a week with the balance by mid-December. Updates will be provided as soon as these are available. We are prepared to initiate discussions on terms and conditions that would allow work to resume on the basis of the 60% design, understanding that any further changes must be considered in a final agreement.

I would like to outline the Corporation's position on five key elements of an agreement for Atcon to resume work:

1. Schedule

Completion must be by December, 2011. This is a one year delay from the original completion date and results in a tight schedule for fabrication and erection of the superstructure and deck. Nevertheless, the Corporation believes that this is achievable and is not in a position to consider a further delay.

The Corporation is also aware that Atcon's subcontractor, Atcon Industrial Services, was unable to meet projected production rates and schedules for pier bents. We have serious doubts about AIS ability to fabricate the superstructure within the time available. The Corporation will require that Atcon provide a schedule and list of

subcontractors and facilities that provides us with confidence that sufficient resources are available to meet the schedule.

2. Price to Complete

For purposes of determining work remaining, Atcon should expect no further work or payment under Earthworks or Foundation Works or for items 3.4 – anchor bolts or 3.6 installation of pier bents. Payments under items 3.3 and 3.5 will include only outstanding amounts due for supply and transportation of pier bents. Future camp costs (beyond December of 2009) are to be fully incorporated in the revised price to complete.

We note that the revised design will result in a reduction in superstructure steel quantity by at least 20% and a reduction in deck concrete quantity of approximately 30%. Apart from these significant reductions in quantity, you will appreciate that the revised design provides several fabrication and erection advantages over the original design for both the truss and the deck:

- Use of more standard sections and less complex welding of truss members
- Bolted connections allow for more efficient shipping options of truss components
- Replacement of bar stays with cables
- Simpler towers and spar frame details
- Simpler main span connection detail and expansion joints
- Provision of conceptual launching scheme
- No pre-stressing or post-tensioning of deck panels required
- Lower concrete strength requirement (35mpa)
- Fewer panels required
- Simpler deck shear connection detail

We expect that Atcon will re-price the remaining work and that your price proposal will fully reflect these constructability improvements. We anticipate that the price reductions will more than offset the claims settlement and delay costs.

3. Settlement of Existing Claims and Disputes

An agreement to resume work must include a resolution of existing claims between Atcon and the Corporation. This includes all claims between the Corporation and Atcon identified in our respective Mediation Briefs of May 2009. It also includes settlement of any claims or potential claims arising since that date.

Work on the next phase of the project must begin with a 'clean slate'. We are seeking cost certainty. This means an agreed settlement of payment for work completed, all existing claims and a firm price to complete.

We recognize that resolution of claims between Atcon and the Corporation may be difficult in the absence of a settlement of Ruskin claims. We also recognize that settlement of the current Ruskin legal action is in our collective interest. We are therefore prepared to discuss with Atcon a settlement of all claims, including our liability for the Ruskin 'pass through' claims as a basis for a negotiated settlement with Ruskin.

4. Quality Control

There have been ongoing disagreements on our respective expectations for Contractor Quality Control. We have also been disappointed with AIS performance in this regard. I expect that Atcon is now fully aware of our requirements and will make provision for meeting them in its schedule and price. Prior to allowing Atcon to resume work, the Corporation will be seeking evidence that Atcon and its subcontractors fully understand and are committed to these requirements and have both the systems and staff to undertake the work.

5. GMP Reduction and Equity

The Atcon commitment to subscribing to \$2 million equity and the \$300,000 GMP reduction must remain in place.

We understand that you will need time to review the new design drawings, consider our requirements and formulate your own. However, meeting the new completion date will require that we have a decision soon and we are under severe time constraints to provide a firm price and schedule to our principals. I must report progress at the end of November and must be able to assure them at that time that an agreement is achievable.

As discussed, we have arranged a conference call for Monday, November 16th to ensure we have a clear understanding of requirements and process. We have also agreed to meeting in Edmonton at 10:00 am on Thursday, November 19th to begin negotiations.

It is our sincere desire to come to an agreement and get this project back on track for a successful conclusion.

Sincerely,



Andrew Gamble

attachment

c Mr. Michael Vandell, President
Deh Cho Bridge Corporation

Mr. Jivkov Jivkov
jivko@jivko.ca

Mr. Bob Milburn, GNWT
Bob_Milburn@gov.nt.ca



Andrew Gamble & Associates
14 Mitchell Drive, Yellowknife, NT, Canada X1A 2H5

Without Prejudice

Mr. Robbie Tozer, President
Atcon Construction
rwtozer@atcongroup.com

May 24, 2009

Dear Mr. Tozer;

Deh Cho Bridge – Superstructure and Deck Design

As you know, the IFC design drawings which formed the basis of our contract require revision.

The FC issue on the pier bents has now been resolved by change order, although the full cost impacts have yet to be finalized.

The superstructure and deck design have been undergoing a second, more detailed and extensive review by the GNWT and their advisors and a number of issues have been identified, in addition to the FC issue and launchability question.

This will confirm earlier direction that Atcon should not commence any work on the superstructure or the concrete deck and finishing works until authorized to do so by the Corporation. This includes all work listed under Tender Appendix F – Schedule of Contract Prices, Parts 3 and 4, except for items 3.3, 3.4, 3.5 and 3.6, to the extent that they apply to pier bents. I can further advise that such authorization is unlikely to be given before September of 2009 and possibly later. The following outlines the status of the design work to be done:

- We have retained Sargent Engineering and Infinity Engineering assist the EoR to respond to these issues, recommend design changes and finalize revised design drawings.
- We anticipate that our design team will provide formal conceptual recommendations to the GNWT and reviewers in the next few weeks, with a view to consensus on the design modifications required. We do not anticipate that this will result in an overall re-design, but expect that some of the changes will reduce costs and improve constructability of the superstructure and deck. Launchability will be addressed.
- They will then prepare final designs and drawings for review and final approval. This will take several months.

Atcon will not be authorized to proceed with any work on the superstructure or deck until such time as;

1. Design modifications have been finalized and approved and provided to Atcon, and;

2. Atcon's proposed fabrication plant and procedures for superstructure and deck have been found acceptable, and;
3. Revised cost and schedule have been agreed.

We will keep you updated on the status of the design modifications and our plans as they develop.

Sincerely,



Andrew Gamble

c Mr. Michael Vandell, President
Deh Cho Bridge Corporation
Mr. Mark Ledwell, Atcon Aroup
mledwell@atcongroup.com
Mr. Frank Flanagan, Atcon Construction
f.flanagan@atcongroup.com
Mr. Jivkov Jivkov
jivko@jivko.ca
Mr. Bob Milburn, GNWT
Bob_Milburn@gov.nt.ca

STEWART MCKELVEY

ATCON CONSTRUCTION INC. – DEH CHO BRIDGE CORPORATION (DCBC)

PART A: OVERVIEW OF PRINCIPAL CLAIMS/ISSUES BETWEEN DCBC & ATCON

DCBC Claims vs. Atcon

The primary issue for DCBC was stoppage of work by Ruskin because of non-payment by Atcon of amounts claimed by Ruskin. Although DCBC has indicated it takes no position on the merits of the disputes between Atcon and Ruskin, DCBC states its concerns as:

- disintegration of relationship between Atcon and Ruskin.
- unlikelihood that the issues will be resolved in a timely manner.
- Atcon's continued refusal to pay Ruskin, ensuring that the work would not continue.
- lack of prosecution of the project by Atcon/Ruskin putting DCBC at risk of violating its obligations to the GNWT and to its bondholders.

Due to the above, DCBC (with support of GNWT) determined that the best course of action was to issue the following technical notices of defaults under the construction Contract:

1. Inadequate Concrete Production Capacity – SP 1.3.6.2

- DCBC alleges that Atcon did not meet minimum concrete production capacity requirements as set out in the Contract.

2. Atcon failed to retain Professional Engineer – SP 1.3.3

- DCBC alleges that Atcon did not retain and appoint a professional engineer as required by the Contract and this led to several problems during 2008 work on the south piers.

3. (a) Atcon failed to prosecute the Work with enough workers, equipment or materials – GC 33.1.2

(b) Atcon discontinued prosecution of the Work – GC 33.1.5

- These defaults arise out of Ruskin stopping work, as Atcon is ultimately responsible for the prosecution of work under the main contract. i.e. Ruskin related issues set out above.

4. Atcon failed to pay creditors for labour, services, equipment, etc. used in the Work – GC 33.1.7

- This default arises primarily out of Atcon's failure to pay amounts claimed by Ruskin.

As a result of the defaults above, DCBC then exercised its right to take prosecution of the earth works and foundation works out of Atcon's hands in accordance with GC33, GC38 and GC39 of the contract.

Shareholdings Issues

DCBC also has made claims against Atcon relating to shareholdings issues:

5. Atcon failed to make good on \$2 million subscription for DCBC shares

- share subscription and shareholder agreements never signed
- parties agreed that amounts would be offset from invoices until subscription price was paid
- DCBC has refused Atcon's request for release of its obligations to subscribe for shares and for return of approx. \$700,000 withheld from invoices.

Atcon Claims vs. DCBC

Atcon puts forward the following claims against DCBC:

1. Wrongful withdrawal of portion of Work from Atcon – GC 58

- DCBC response: - failure to pay Ruskin (whatever Atcon's reasons for such) constitutes default under DCBC-Atcon contract.
- Default and "take-work" effectively represents a contractual "work-around" to get the project back on track – per DCBC June 20, 2009
- Value of the work removed from Atcon is approximately \$10 million

2. DCBC in default of payments to Atcon – GC 58

- Atcon claims approximately \$3 million from DCBC
- DCBC response: - its claims against Atcon will offset any ultimate liability to Atcon
- DCBC response: - no claims should be addressed until Atcon and DCBC have dealt with contract changes arising from the re-issued IFC drawings, before end of calendar year

3. Design flaws approved by DCBC have caused Atcon significant damages – GC 58

- DCBC response: - re-issued IFC drawings will be available in Nov/Dec, 2009
- DCBC response: - should be a "major" negotiation in Dec 09/Jan 10 where all issues, including claims, price, and schedule, are addressed

4. DCBC dealing directly with Ruskin as if had a contract with Ruskin – GC 58

- DCBC response: - serious/unfounded assertion by Atcon that does not assist in maintaining ongoing relationship – June 20, 2009

Ruskin Claims vs. Atcon

1. **Atcon has not paid all amounts owing to Ruskin**
 - Ruskin has made its claims the subject of an action in the NWT courts
 - Ruskin claims approximately \$10 million
 - Atcon says Ruskin's claims inflated
 - Atcon claims right of set-off
 - Atcon has engaged Gowlings to defend the Ruskin claims
 - See separate summary of Ruskin statement of claim

Gamble & Jivkov Claims vs. Atcon

1. **Wrongful allegation by Atcon that loan advances made by Atcon to Gamble & Jivkov**
 - Atcon acknowledged allegation made in error; unclear if matter resolved – June 24, 2009

Gowlings initial views on issues identified by M. Ledwell – October 21, 2009

1. **Can the contract be terminated by either party and on what conditions?**
 - Can be terminated by DCBC, but not by Atcon per GC41 at any time by giving notice. If so, Atcon has rights to payments as determined under contract.
2. **Was the action by DCBC to remove work from Atcon justified?**
 - Not enough information to provide definitive answer, but failure to pay legitimate amounts owing to creditors amounts to default under contract giving rise to DCBC right to take work out of Atcon's hands – at least a substantial amount of the Ruskin claim may be legitimate.
3. **Is Atcon's performance security at risk?**
 - Not enough information to provide definitive answer, but under GC43 DCBC may convert security to its own use if work taken out of Atcon's hands or if Atcon in default, so likely security is at risk.
4. **Has work under contract been suspended and if so, is the suspension the subject of compensation?**
 - Appears part of the work (steel superstructure) has been suspended. In event of suspension, Atcon entitled to payment of reasonable standby costs subject to qualifications. If suspension lasts longer than 30 days, can be deemed a notice of termination.
5. **How does the contract address the type of design change that is contemplated, particularly as it relates to the GMP (Guaranteed Maximum Price)?**
 - Engineer to determine increases or decreases in cost of work relating to changes. GMP not relevant to this issue.
6. **What is Atcon's exposure in relation to the Ruskin claims?**
 - Gowlings did not answer this question.
7. **How can Atcon enforce its claims against the DCBC?**
 - Under GC58 – by serving a notice of claim, or a notice of dispute where claim is unresolved. Contract provides a dispute resolution process. Claims should be submitted now.

NEW BRUNSWICK CONFLICT OF INTEREST COMMISSIONER

RECEIVED

APR 7 2010

Clerk's Office
Legislative Assembly

IN THE MATTER OF A REQUEST FOR AN
INVESTIGATION UNDER THE *MEMBERS'
CONFLICT OF INTEREST ACT*, CHAPTER M-
7.01, STATUTES OF NEW BRUNSWICK, 1999.

LEGISLATIVE ASSEMBLY OF NEW
BRUNSWICK

REQUEST FOR AN INVESTIGATION INTO
THE CONDUCT OF SHAWN GRAHAM,
PREMIERE OF THE PROVINCE OF NEW
BRUNSWICK.

AFFIDAVIT

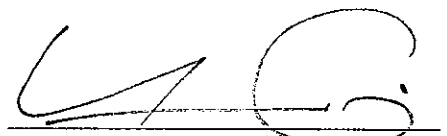
I, **Claude Williams**, of the Village of Saint-Antoine, County of Kent and Province of New Brunswick, Member of the Legislative Assembly of New Brunswick for Kent-South, MAKE OATH AND SAY AS FOLLOWS:

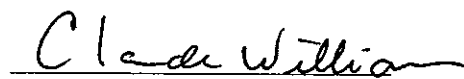
1. I am Claude Williams, a Member of the Legislative Assembly for the Province of New Brunswick, and, as such, I have personal knowledge of the matters deposed to herein except where otherwise stated. Where otherwise stated, I believe the information to be true.
2. Shawn Graham is a Member of the Legislative Assembly of New Brunswick and has been the Premier of the Province of New Brunswick since October 2006.
3. Allan Graham is the father of the said Shawn Graham.
4. The said Allan Graham currently sits on the Board of Directors of a mining and petroleum company named PetroWorth Resources.
5. Prior to Allan Graham being appointed to the Board of Directors for PetroWorth Resources, Allan Graham was a member of the Board of Directors of Vanerply, a subsidiary of the ATCON group of companies.
6. I have reviewed the information posted on the websites of ATCON and Vanerply and verily believe that Vanerply became a subsidiary of the ATCON group in January 2001.
7. Attached hereto and marked as Exhibit "A" is a copy of the information posted on the ATCON website, including a link to its subsidiary, Vanerply.

8. Attached hereto and marked as Exhibit "B" is a copy of the information posted on the Vanerply website, including a reference to being part of the Atcon Group.
9. Having reviewed the information posted on the ATCON website, I verily believe that Robert Tozer is the President and Chief Executive Officer of the ATCON group of companies and its subsidiaries.
10. Attached hereto and marked as Exhibit "C" is a copy of the information posted on the ATCON website which forms part of my belief expressed in the preceding paragraph.
11. I verily believe that Mr. Tozer is also the Chairman of the Board of Vanerply.
12. Attached hereto and marked as Exhibit "D" is a copy of a corporate profile of Vanerply in which it is indicated that Robert Tozer is the Chairman of the Board of Vanerply.
13. Attached hereto and marked as Exhibit "E" is a copy of the information posted on the Reuters News Agency website regarding Alan Graham. The information contained on the website indicates, and I verily believe, that the said Alan Graham serves on the Board of Vanerply.
14. I verily believe that the headquarters of Vanerply are located in Otterbacken, Sweden.
15. I verily believe that the headquarters of the ATCON group of companies is located in Miramichi, New Brunswick, Canada.
16. I have reviewed the various Orders-in-Council and verily believe that since August 5, 2008, approximately \$63,362,845.00 of New Brunswick tax dollars have been provided in financial assistance to ATCON and its subsidiary group of companies.
17. I verily believe that said individuals, Robert Tozer and Allan Graham, were on the Board of Directors of Vanerply and/or ATCON when ATCON received financial assistance from the New Brunswick Provincial Government.
18. On August 5, 2008 while Allan Graham was on the Board of Directors of Vanerply, the New Brunswick government issued a press release stating that \$13,362,845.00 was provided to ATCON by way of a loan guarantee. I copy of the said press release is attached hereto as Schedule "F" and forms part of my belief.


19. On March 26, 2009, by way of an Order in Council, the government of the Province of New Brunswick authorized a further \$50,000,000.00 in loan guarantees to ATCON. A copy of the said Order-in-Council is attached hereto and marked as Exhibit "G".
20. I verily believe that Shawn Graham in pith and substance violated the *Members Conflict of Interest Act*. I believe that section 4 of the *Act* is very clear and should have prohibited the Premier from authorizing financial assistance to ATCON. He should have reasonably known that in making the decision there was an opportunity to further his fathers financial and business interests.
21. I verily believe that Allan Graham was a member of the Board of Directors of a company receiving financial support from the New Brunswick Provincial Government when his son, Shawn Graham, was Premier. I believe the obvious nature of this violation warrants an investigation into Shawn Graham's conduct.
22. I make this Affidavit in support for an investigation under section 36 of the *Members Conflict of Interest Act* and for no other or improper purposes.
23. My request for an investigation is not frivolous or vexatious and is made in good faith. I verily believe the Premier knew or reasonably should have known that his decisions to use New Brunswick tax dollars directly advanced the financial and business interests of his father Allan Graham.

SWORN TO BEFORE ME at
the City of Fredericton
in the Province of New Brunswick, this
7th day of April, 2010.


A Commissioner being a Solicitor


Claude Williams

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Home > [Wood Panel Manufacturing](#) > Vanerply Plywood Plant: Sweden

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Vanerply Plywood Plant: Sweden

The Vanerply Plant is the largest plywood plant in Sweden. It is strategically located in the middle of Sweden on the edge of Lake Vaner which is the largest fresh water lake in Europe. Its location allows for optimum deliveries of raw materials from both the North and South of Sweden for the efficient running of the plant. The Vanerply plant has been in operation since 1972 and has developed not only a highly skilled labor force but the name Vanerply stands for exceptional quality and is recognized as such throughout Europe. Vanerply has major market share of all the plywood markets in both Sweden and Norway.


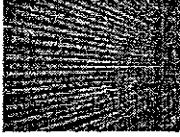
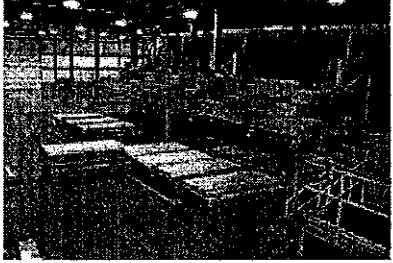
The mill contains a high speed eight foot COE Lathe and a 32 section Raute dryer with a Macano automatic grading scanner that leads to a 10 bin automatic dry veneer stacker. Layup is done through three spreaders which feed two presses which have 50 openings. Vanerply makes a wide variety of products which include 8' 9' and 10' panels that range in thickness from 3/8's of an inch through 1 inch. Product mix includes Sheathing, Tongue and groove, Sanded, Treated, and cut to size panels. Vanerply is an established plywood plant that has positioned itself for decades to come.

Our customers are based in the following countries:

- Sweden
- Denmark
- France
- Holland
- Norway
- Poland
- Germany
- UK
- Spain


For more information: www.vanerply.se

Photo gallery




page 1 of 2

Where we work




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Trans-Canada Highway Project



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20 10.


A COMMISSIONER OF OATHS

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Company

Vänerply is the largest and one of Europe's leading manufacturers of plywood. Our factory in Otterbäcken has a capacity of about 105 000 m³, or approximately 8 000 000 m² of plywood a year.

Our turnover is about 330 million and we are 160 employees.

Our main market is Northern Europe with emphasis on Scandinavia.

Our plywood is made from renewable raw material, which saves the earth's resources. They can easily re-used and recycled. Our plywood is Ecolabeled.

Vänerply AB is quality certified to ISO 9001:2000.

We have access to the continental networks. Different thicknesses, styles and grades of plywood can be loaded together and directly delivered to the customer. To eliminate transshipment risks and fördyrningar.

Our goal is to be our customers' business partners. Crass terms, we want you to make money with us. As a customer of Vänerply is you in your own country's currency. Thus you avoid the risk of fluctuations in the foreign exchange market.


Since January 2001 Vänerply in the Canadian group Atcon Group.
Solid relationships with Vänerply pays off!

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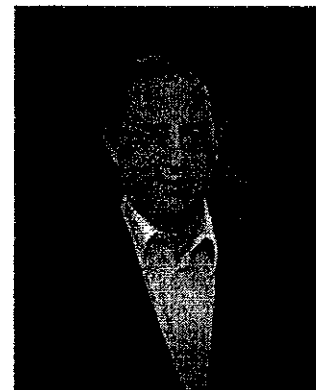

A COMMISSIONER OF OATHS

President's Message

ATCON has enjoyed tremendous growth over the past years. Our goals continue to be: safety, quality, growth, improved productivity and community.

We are committed to excellence in each of these areas. Today our civil construction and industrial companies are working across Canada. Our environmental company has become a national leader in its industry. As well our many manufacturing plants have been recognized for the introduction of automation and robotics into the manufacturing process. These are only a few ATCON achievements – there are many more today and in the future.

The key to ATCON's success is its employees. Since 1978, our work force has grown to a little over 2000 employees --- in the Atlantic Provinces, Arctic Region, Quebec, Alberta, the State of Maine, and Sweden. As opportunities presented to ATCON continue to increase, we will continue to build our team. Attracting quality people to ATCON is important to us and critical to our future success. We will continue to train our people and provide them exciting career opportunities. ATCON'S reputation for getting the job done is well known to our customer's and our employees.



Robbie Tozer, CEO

Our commitment to community is a big part of what ATCON is all about. The ATCON team is a family and our employees watch out for one another, in the work place and at home. ATCON is the proud sponsor of the annual ATCON Turnaround Achievement Awards in New Brunswick, where children who have overcome significant obstacles in their lives are recognized for their achievements. We are also the founding member of the Uganda Foundation, an organization that supports schools and orphanages in central Uganda.

You will hear more about ATCON in the years ahead as our business continues to grow and our employees continue to do their very best every day.

ATCON Atcon-Corporate Update

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Vänerply AB

Contact

VAT number: 556217-0349
 Company: Vänerply AB
 SE-547 81 Otterbäcken
 Västra Götalands län
 County: Västra Götalands län
 Telephone: +46 (0)551-28200
 Fax: +46 (0)551-22692
 E-mail: info@vanerply.se
 Website: www.vanerply.se

Contact persons

Chairman of the board: Robert Tozer
 Managing Director/CEO: Leo Persson
 Finances: Leo Persson
 Marketing: Leif Waltari
 Purchasing Director: Thomas Högberg
 IT: Peter Bergström
 Technology: Sven-Erik Schön
 Personnel: Lena Kärrfelt

Business information

Established: 1970
 Subsidiary company to: OPI AB
 Stock-exchange listing: Not listed

B20 Manufacture of wood and of products of wood and cork, except furniture manufacture of articles of straw and plaiting materials (Wood working industry)

- 20301 Manufacture of prefabricated wooden buildings | Manufacture of other builders' carpentry and joinery

Rankings

Rank in Sweden (incl. subsidiaries) by	Rank in the Nordic countries (incl. subsidiaries) by
- Number of employees: 2324	- Number of employees: 5421
- Total assets: 4739	- Total assets: 11198
- Net turnover: 3501	- Net turnover: 8662
- Net profit: 4330	- Net profit: 11115

B20 Manufacture of wood and of products of wood and cork, except furniture manufacture of articles of straw and plaiting materials (Wood working industry)

Rank in industry in Sweden by	Rank in industry in the Nordic countries by
- Number of employees: 58	- Number of employees: 110
- Return on assets (ROA): 409	- Return on assets (ROA): 833
- Total assets: 106	- Total assets: 177
- Profitability: 362	- Profitability: 652
- Net turnover: 97	- Net turnover: 169
- Return on equity (ROE): 443	- Return on equity (ROE): 928
- Net profit: 82	- Net profit: 153
- Solvency: 212	- Solvency: 455

Closing information (x1000 SEK)

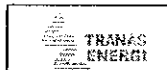
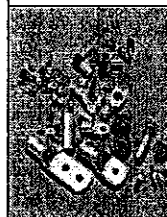
Fiscal year	200901	200801	200701
Net turnover	304.637	325.696	300.778
- exports			
Foreign sales			
Financial expenses	2.643	3.546	5.536
Earnings before taxes	12.551	16.238	11.831
Total assets	192.413	201.384	203.741
Current assets	109.647	115.435	114.942
Current liabilities	83.399	102.791	115.025
Equity capital	97.378	86.501	68.829
- share capital	2.000	2.000	2.000
Employees (average)	170	178	178
Shareholders			
Investments in fixed assets			

The closing information is gathered directly from the companies or from UC (Sweden), Experian (Norway), KOE (Denmark) and Asiakastieto (Finland).

Financial ratios



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 Importörer, monterings-
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 installationer.
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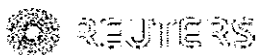
Fiscal year	200901	200801	200701
Solvency	50.6%	43.0%	33.8%
Turnover per employee	1.792	1.830	1.690
Earnings as % of turnover	4.1%	5.0%	3.9%
Return on assets (ROA)	7.9%	9.8%	8.5%
Current ratio	131.5%	112.3%	99.9%
Return on equity (ROE)	12.9%	18.8%	17.2%

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OVERVIEW	NEWS	KEY DEVELOPMENTS	PEOPLE	CHARTS	FINANCIALS	OPTIONS	ANALYSTS	RESEARCH
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LDT.F on Frankfurt Stock Exchange

0.05EUR

3:03am EDT

Price Change (% chg)

€-0.01 (-12.07%)

Prev Close

€0.06

Open

€0.05

Day's High

€0.05

Day's Low

€0.05

Volume

0

Avg. Vol

0

52-wk High

€0.09

52-wk Low

€0.01

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SEARCH

Graham, Alan

BRIEF BIOGRAPHY

Mr. Alan Graham is an Independent Director of Landdrill International Inc., since May 24, 2007. Mr. Graham is a businessman who has served on various levels of Government with the Province of New Brunswick. He was first elected Member of New Brunswick Legislature Assembly in 1967 where he served as the MLA for the riding of Kent for 31 years until his retirement from politics in 1998. From 1987-1991 Mr. Graham served as Minister of Agriculture and then served as Minister of Natural Resources and Energy from 1991-1998. During his career in politics, Mr. Graham has been the Chairman of the Board of Forest Protection Ltd. and Maritime Forestry Complex Corporation. He has also been a member of the Board of Directors of Provincial Holdings Ltd. and the New Brunswick Government Economic Development Funds Inc. In 1997 he was named Deputy Premier while still keeping his portfolio as Natural Resources and Energy Minister, until his retirement. Currently, Mr. Graham serves on various boards such as: Fantech Canada Ltd, Vanerply AB in Otterbacken, Sweden, Atlantic Salmon Federation of Canada and Miramichi-Uganda Foundation Inc. He is a Trustee of the Nature Conservancy of Canada and a Commissioner with the Canadian Nuclear Safety Commission in Ottawa. He also serves on other boards related to lumber, agriculture, transportation and export.

BASIC COMPENSATION

Total Annual Compensation,	Long-Term Incentive Plans,	All Other,	Fiscal Year Total,
-	-	-	-

OPTIONS COMPENSATION

	Quantity	Market Value
Exercisable	-	-
Unexercisable	-	-
Exercised	-	-



BASIC COMPENSATION

Name	Fiscal Year Total
Goguen, Ronald	394,760
West, Derrick	165,245
Goguen, Ronald	-
Clinch, J. Roger	-
Ormston, Richard	-
Holt, David	-

As Of 30 Dec 2008

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News Release

Communications New Brunswick

Business New Brunswick

**Province supports ATCON in multi-million-dollar project
(08/08/05)**

NB 1128

Aug. 5, 2008

MIRAMICHI (CNB) - A project to provide steel fabrication for the \$135-million Deh Cho Bridge over the Mackenzie River in the Northwest Territories will be undertaken by ATCON Holdings Inc., thanks in part to the government's assistance in securing a loan guarantee, Business New Brunswick Minister Greg Byrne announced today.

"This announcement will help ensure that the company has access to the financial resources necessary to undertake the work required to begin and complete the project," said Business New Brunswick Minister Greg Byrne. "Today, we are helping an important Miramichi manufacturer that has created sustainable employment for people in this region. Our support of this project is another step in this government's plan to transform the Miramichi economy. This type of strategic partnership is an example of how we are helping our companies be more innovative and be more successful, while furthering our goal of self-sufficiency by 2026."


The provincial government will provide ATCON with a \$13,362,845 loan guarantee, which will allow it to undertake work for a contract which led to the creation of the \$21.5-million Centre of Excellence in Steel Fabrication in Miramichi last September, and has led to the creation of 150 jobs. The steel beams required for the project will be fabricated in Miramichi, and assembled in the Northwest Territories.

Located in Fort Providence, 300 kilometers southwest of Yellowknife, the bridge will provide a year-round land connection between the Northwest Territories and the southern provinces, replacing ferries and ice roads.

This announcement is part of the government's commitment to diversifying the region's economy and making economic development a priority for the Miramichi region. Recent announcements include 207 new jobs at Hostopia.com, which recently celebrated its first year of operation, strategic investments at FatKat Animation Studios, and the creation of the Miramichi Community Action Committee.

ATCON Group was founded in 1978 in New Brunswick and now has more than 2,000 employees working in Canada, the U.S. and Europe. Headquartered in the Miramichi, ATCON has a diverse group of industrial-based companies focusing on five primary sectors: heavy construction, energy, steel fabrication and machining, environmental products and services, and manufactured wood products.

08/08/05

THIS IS EXHIBIT "F" REFERRED TO IN THE
AFFIDAVIT OF Claude Williams
SWORN TO ON THE 7 DAY OF April, A.D.
20 10.

A COMMISSIONER OF OATHS

30/03/2010

Province supports ATCON in multi-milli...

MEDIA CONTACT: Ryan Donaghy, communications, Business New Brunswick, 453-2694.

08/08/05

Communications New Brunswick

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MARCH 26, 2009

2009-130

THIS IS EXHIBIT "G" REFERRED TO IN THE
 AFFIDAVIT OF Claude Williams
 SWORN TO ON THE 7 DAY OF April, A.D.
 20 10.


 A COMMISSIONER OF OATHS

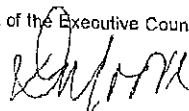
Under section 3 of the Economic Development Act, the Lieutenant-Governor in Council gives his approval for the Minister of Business New Brunswick

- (a) to guarantee the repayment of a loan made or to be made by a Canadian financial institution to Atcon Holdings Inc., in an amount not to exceed \$10,000,000 for a term not to exceed eight years;
- (b) to guarantee the repayment of a loan made or to be made by a Canadian financial institution to Atcon Holdings Inc., in an amount not to exceed \$20,000,000 for a term to expire on July 31, 2010; and
- (c) to guarantee a loan provided or to be provided by a Canadian financial institution to Atcon Holdings Inc., with the liability of the Minister under the guarantee not to exceed \$20,000,000 for a term not to exceed four years.


 Herménégilde Chiasson
 Lieutenant-Governor

This is to certify that the foregoing is a true copy of an Order of the Lieutenant-Governor in Council of the
 Je certifie que le document qui précède est une copie conforme d'un décret du lieutenant-gouverneur en conseil
 Province of New Brunswick, made on the 26 March 2009.
 de la province du Nouveau-Brunswick, pris le 26 March 2009.

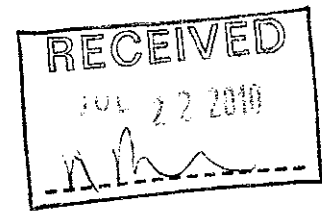
Deputy Clerk of the Executive Council/Greffier suppléant du Conseil exécutif



July 22, 2010

By Fax and Hand Delivered: 444-5224 (2 pages)

Conflict of Interest Commissioner
Officer of the Legislative Assembly
Edgecombe House, P. O. Box 6000
736 King Street
Fredericton NB E3B 5H1



Attention: Hon. Patrick A. A. Ryan, Q.C.

Dear Sir:

Re: Premier Shawn Graham - Complaint by Claude Williams sworn April 7, 2010

In regard to the aforementioned affidavit, my response is as follows:

- 1) Alan Graham was a Director of Vanerply AB for approximately nine or ten years resigning in May 2009. He was never a shareholder. I had no knowledge of my father's responsibilities or his remuneration.
- 2) Alan Graham has not otherwise been a Director or Shareholder of Atcon Group during any period since I have been Premier of the Province of New Brunswick.
- 3) Both the 13 Million ("M") and 50M loan guarantees went through the normal channels at Business New Brunswick, i.e., senior management, Industrial Development Board, Board of Management and Cabinet.
- 4) The 13M loan guarantee was related to a bridge contract in the North West Territories, in particular, the 13M was used to assist in construction of a steel fabrication mill in the Miramichi, which in turn helped to secure the bridge contract.
- 5) The bridge contract was cancelled through no fault of Atcon Group or the Province. It is anticipated, that the 13M will be recovered as a result of the cancellation of the contract.

.../2




Hon. Patrick A. A. Ryan, Q.C.
July 22, 2010
Page 2

- 6) The 50M loan guarantee was advanced to allow Atcon Group
 - a) To finish the steel fabrication mill (10M);
 - b) To pay off high interest rate loans (20M); and
 - c) To secure an operating line of credit (20M).
- 7) The 50M loan guarantee was conditional on several factors, one of which was that Vanerply be sold. Further, it could not reject any offer greater than 18M and it had to be sold no later than July 20, 2010. All proceeds of the sale were to be applied to the loan guarantee of 50M.
- 8) The 50M loan guarantee was approved by the Province in March 2009; Alan Graham resigned from the Board of Directors of Vanerply in May 2009; Atcon Group met their numerous conditions/obligations in June 2009; The money (from the loan guarantee) began being paid in July 2009.
- 9) Atcon Group employed 1,785 to 2,100 people, the vast majority of whom either lived on the Miramichi, or were from the Miramichi, and its failure would have major economic consequences for that region and the Province.
- 10) At no time did I consider that I had reasonable grounds to believe that I had a conflict of interest in dealing with the aforementioned loan guarantees to Atcon Group.

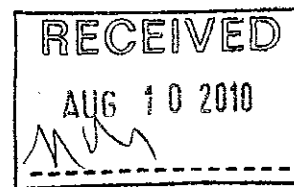
If you have any further questions or inquiries, please feel free to contact me or my solicitor Allison Whitehead, Q.C.

Yours truly,

A handwritten signature in black ink, appearing to read "Shawn Graham". The signature is stylized with a large, sweeping initial 'S' and a cursive 'Graham'.

Shawn Graham
Premier

August 9, 2010



Conflict of Interest Commissioner
Officer of the Legislative Assembly
Hon. Patrick A. A. Ryan, Q.C.
Edgecombe House, P.O. Box 6000
736 King Street
Fredericton, N.B. E3B 5H1

COIC/CCI

Exhibit/Proc: A of the investigation

Date: Aug 10, 2010

Dear Commissioner:

Re: Financial Assistance Process

I am writing in response to your recent request for information related to the process for government granting loan guarantees and other financial assistance.

The legal authority for the Minister of Business New Brunswick to provide financial assistance to aid or encourage the development of industry in the Province falls under the *Economic Development Act* and *New Brunswick Regulation 82-197*.

There are two main programs administered by Business New Brunswick ("BNB") – i.e., the Financial Assistance to Industry Program (FAIP) and NB Growth, each with different approval limits and processes. The FAIP typically involves larger amounts of assistance, whereas the maximum amount of assistance under the NB Growth Program is \$100,000.

Applications for assistance under FAIP or NB Growth are assigned to a Project Executive within the Business Financial Support Branch for review and recommendation. Once all required supporting information has been provided by the applicant to BNB, the Project Executive performs the required due diligence and drafts a preliminary project evaluation and recommendation for review by the branch manager and director. This process includes an analysis of the applicant's financial position and associated industry sector, financial and technical feasibility, the market opportunity, and the anticipated economic benefits should the application be approved. Input on the technical and market aspects of the project are sometimes sourced from BNB sector and market officers and are incorporated into the analysis. As part of the financial due diligence, historical and projected financial statements are analyzed, as well as the risk associated with the company's management, human resources, competition, marketing/distribution, raw materials and overall financial health. The formulation of recommendations on applications also frequently involves negotiation by the Project Executive with other lenders and the applicant on the proposed terms and conditions of the requested assistance.



FAIP Application Decision Process

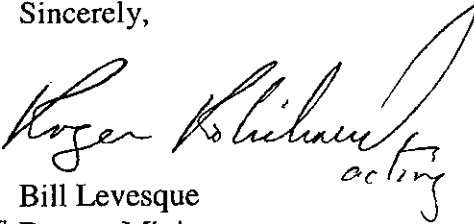
Once the internal due diligence process is completed, the Project Executive's project evaluation and recommendation is presented to the Project Review Committee ("PRC") for review and recommendation. The PRC consists of the Assistant Deputy Ministers and senior managers of BNB, and it may accept or reject the Project Executive's recommendation. The project evaluation and PRC recommendation is then presented to the New Brunswick Industrial Development Board ("NBIDB") for review and recommendation. NBIDB is comprised of Deputy Ministers from the economic development departments of government, including BNB, Post-Secondary Education, Training and Labour, Natural Resources, Fisheries, Agriculture and Aquaculture, Tourism and Parks, and the President of the Regional Development Corporation. NBIDB recommendations are then provided to the Minister of BNB who is not bound by same. The Minister has authority under the Act to decline any application once reviewed by NBIDB, regardless of its recommendation. The Minister also has authority under the Act to approve applications which are positively recommended by NBIDB where the requested and outstanding assistance totals \$500,000 or less. The Minister must seek Cabinet approval for all applications which he wishes to support over the above-noted \$500,000 amount, or for applications under that amount which have not been recommended by NBIDB. Applications requiring Cabinet approval are first presented by the Minister and senior staff to the Board of Management (a committee of Cabinet), who then provides its recommendations to Cabinet for review and decision.

NB Growth Application Decision Process

The decision process for NB Growth applications (due to the higher volume and lower dollar amounts) differs from that for FAIP applications. NB Growth project evaluations and recommendations are formulated by the Project Executive for review by the branch manager and director as noted above, but are then sent to the Minister for review and decision. PRC only reviews NB Growth applications where a difference of opinion exists between the BNB Project Executives and sector officers. Applications under NB Growth are not presented to NBIDB, BOM or Cabinet.

I trust the above information is satisfactory, and look forward to meeting with you to discuss this matter further and to elaborate on any areas in which you may have questions.

Sincerely,


 for Bill Levesque
 Deputy Minister

cc. S. Perron
 J. Rosengren

[Traduction.]

le 9 août 2010

L'honorable Patrick A.A. Ryan, c.r.
Commissaire aux conflits d'intérêts
Bureau de l'Assemblée législative
Maison Edgecombe, C.P. 6000
736, rue King
Fredericton (N.-B.) E3B 5H1

COIG/CCI
Exhibits/Pièces : A de l'investigation
le 10 août 2010
Date: 10 août 2010

Objet : Processus d'aide financière

Monsieur le commissaire,

Je vous écris en réponse à votre récente demande d'information relative au processus d'octroi par le gouvernement de garanties de prêt et d'autres formes d'aide financière.

Le ministre des Entreprises Nouveau-Brunswick est investi du pouvoir juridique d'accorder une aide financière en vue de faciliter et de favoriser l'établissement ou le développement d'une entreprise industrielle dans la province en vertu de la *Loi sur le développement économique* et du *Règlement du Nouveau-Brunswick 82-197*.

Entreprises Nouveau-Brunswick (ENB) administre deux programmes principaux — le Programme d'aide financière à l'industrie (PAFI) et le Programme de croissance des entreprises du N.-B. — dont les limites et processus d'approbation diffèrent. Le PAFI vise habituellement des montants d'aide plus importants, tandis que le montant maximal d'aide au titre du Programme de croissance des entreprises du N.-B. est de 100 000 \$.

Les demandes d'aide au titre du PAFI ou du Programme de croissance des entreprises du N.-B. sont affectées à un chargé de projet de la Direction de soutien financier des entreprises aux fins d'examen et de recommandation. Une fois que le demandeur a fourni à ENB tous les documents à l'appui exigés, le chargé de projet exerce une diligence raisonnable et rédige une évaluation préliminaire du projet ainsi qu'une recommandation qui sont soumises à l'examen du gestionnaire et du directeur

.../2

de la direction. Le processus comprend une analyse de la situation financière du demandeur et du secteur industriel connexe, de la faisabilité financière et technique, des débouchés et des avantages économiques escomptés si la demande était approuvée. Un apport sur les aspects techniques du projet et ceux liés au marché est parfois obtenu des agents de secteur et de marché d'ENB puis intégré à l'analyse. La diligence raisonnable en matière financière inclut l'analyse des états financiers historiques et prévisionnels, ainsi que des risques liés à la gestion, aux ressources humaines, à la concurrence, à la commercialisation et à la distribution, aux matières premières ainsi qu'à la santé financière générale de la compagnie. La formulation des recommandations sur les demandes nécessite en outre fréquemment des négociations entre le chargé de projet et d'autres prêteurs et le demandeur sur les modalités proposées de l'aide sollicitée.

Processus décisionnel pour les demandes au titre du PAFI

Une fois terminé le processus interne de diligence raisonnable, le chargé de projet présente son évaluation du projet et sa recommandation à cet égard au Comité d'examen des projets (CEP) aux fins d'examen et de recommandation. Le CEP, qui regroupe les sous-ministres adjoints et les gestionnaires principaux d'ENB, peut accepter ou rejeter la recommandation du chargé de projet. L'évaluation du projet et la recommandation du CEP sont ensuite présentées au Conseil de développement industriel du Nouveau-Brunswick (CDINB) aux fins d'examen et de recommandation. Le CDINB est composé des sous-ministres des ministères chargés du développement économique — ENB, Éducation postsecondaire, Formation et Travail, Ressources naturelles, Pêches, Agriculture et Aquaculture et Tourisme et Parcs — et du président de la Société de développement régional. Les recommandations du CDINB sont présentées par la suite au ministre d'ENB mais ne le lient pas. La loi autorise le ministre à rejeter toute demande examinée par le CDINB, peu importe la recommandation de ce dernier. La loi autorise en outre le ministre à approuver les demandes qui ont reçu une recommandation favorable du CDINB si le total de l'aide demandée et de l'aide impayée est égal ou inférieur à 500 000 \$. Le ministre doit demander l'approbation du Cabinet pour les demandes d'un montant supérieur à 500 000 \$ qu'il veut appuyer ainsi que pour les demandes d'un montant inférieur à cette somme que le CDINB n'a pas recommandées. Les demandes qui nécessitent l'approbation du Cabinet sont d'abord présentées par le ministre et le personnel-cadre au Conseil de gestion (un comité du Cabinet), qui présente ensuite ses recommandations au Cabinet aux fins d'examen et de décision.

Processus décisionnel des demandes au titre du Programme de croissance des entreprises du N.-B.

En raison du volume supérieur et des sommes plus faibles, le processus décisionnel pour les demandes au titre du Programme de croissance des entreprises du N.-B. diffère de celui pour les demandes au titre du PAFI. Les évaluations et les recommandations relatives aux projets au titre du

Programme de croissance des entreprises du N.-B. sont formulées par le chargé de projet aux fins d'examen par le gestionnaire et le directeur de la direction, selon les modalités décrites ci-dessus, mais elles sont ensuite acheminées au ministre aux fins d'examen et de décision. Le CEP n'examine les demandes à ce titre que dans le cas d'une divergence d'opinions entre les chargés de projets d'ENB et les agents de secteur. Les demandes au titre du Programme de croissance des entreprises du N.-B. ne sont présentées ni au CDINB, au Conseil de gestion ni au Cabinet.

J'espère que les renseignements ci-dessus vous satisferont et je me ferai un plaisir de vous rencontrer pour discuter davantage de la question et pour donner de plus amples renseignements sur les domaines où vous avez peut-être des questions.

Je vous prie d'agréer, Monsieur le commissaire, l'expression de mes sentiments les plus distingués.

Pour Bill Levesque, sous-ministre

Roger Robichaud [signature]

c.c. : S. Perron
J. Rosengren

IN THE MATTER OF THE *MEMBERS' CONFLICT OF INTEREST ACT*, S.N.B. 1999, c. M-7.01

AND IN THE MATTER OF THE *INQUIRIES ACT*, R.S.N.B. 1973, C.I-11, S.4

AND IN THE MATTER OF AN INVESTIGATION AND INQUIRY of an alleged breach of Section 4 of the *Members' Conflict of Interest Act* by Shawn Graham, a member of the Executive Council in participating in Cabinet approvals of guarantees to a Canadian financial institution in favour of Atcon Holdings Inc. while his father, Alan Graham, was a paid director and consultant to the Atcon group of companies or a subsidiary thereof.

INSPECTION OF DOCUMENTS - INTERIM DECISION

There seems to me to be a misunderstanding as to the purpose of an inquiry. First of all, let me make it clear that an inquiry is not a trial. There is no lawsuit before me. The procedure followed in an inquiry is not adversarial. The witnesses who are called upon to testify and to produce documents establish the facts for the Commissioner to write a report for the Legislative Assembly. My mandate is to examine in a structured and independent manner the facts and events surrounding an allegation of conflict of interest by one member of the assembly against another member of the assembly. In the end the inquiry exemplifies and tests public confidence in government institutions.

The subject of this Inquiry is a request by affidavit sworn the 7th day of April, 2010 for an investigation under the *Members' Conflict of Interest Act* that Shawn Graham, a Member and President of the Executive Council of New Brunswick, was in a conflict of interest when he participated in Executive Council meetings for approval of financial assistance guarantees of many millions of dollars for the Atcon group of companies while

his father, Alan Graham, was a director and consultant of Vanerply AB one of the Atcon group of companies during the years 2008 and 2009.

The former Premier formally replied that he did not have reasonable grounds to believe that he had a conflict of interest in dealing with the guarantees.

The investigation proceeded until the Deputy Minister of Business New Brunswick, Bill Levesque, failed to respond to repeated requests for information and the production of pertinent documents under his care or control. As a result, these negative responses obliged me to expand the investigation into an investigation and inquiry. Mr. Levesque was summonsed to testify.

On the witness stand Mr. Levesque refused to produce or discuss the contents of various drafts of memorandums to the executive council prepared by personnel in Business New Brunswick while the Atcon requests for financial assistance proceeded through the multi stage application process in Business New Brunswick and on their way to the Executive Council. The requests for \$50,000,000 were consistently rejected at all levels in Business New Brunswick but approved by the Executive Council. An Order in Council was authored on March 26, 2009 for the \$50,000,000. The refusals to produce or to testify are founded upon assertions of privilege.

It is submitted by Shawn Graham that Alan Graham was and had been a director of Vanerply AB for approximately nine or ten years until resigning in May of 2009 a date subsequent to the Order in Council.

The Atcon group of companies has been placed in bankruptcy and New Brunswick has been called upon to pay. Although there may be some recovery, the losses are still being calculated and litigated and may exceed the intended exposure of \$50,000,000.

COUNSEL

Throughout the investigation and inquiry the Attorney General of New Brunswick has provided counsel to present and former government employees no matter whether the witnesses or potential witnesses were departmental employees or employees at the level of the Executive Council. The Attorney General is a member of the Executive Council. This may well suggest that there is a systemic conflict of interest in the Attorney General's office as evidenced by counsel advising personnel at various department levels and then advising the executive council on the same legal matters as they eventually evolved at the final level. In some instances the same lawyer, because of certain file familiarity or expertise, appeared and advised at the various levels. The conflict is a cross polination by lawyers from the office of the Attorney General providing legal advice to various levels of the bureaucracy and to the executive council with divergent interests.

The former Premier is represented by Allison Whitehead Q.C. or, when necessary, a partner in his law firm.

ONUS OF PROOF

The onus of proof of establishing privilege rests with the party seeking to rely on its existence. In the case at bar the onus is on the Executive Council or the entity purporting

to represent the Executive Council, the Attorney General of New Brunswick. Application of the onus of proof goes back as far as *Stockdale v. Hansard* (1839), 9 Ad & E 1, 112 E.R. 1112 and was applied by the Supreme Court of Canada in *Canada (House of Commons) v. Vaid* [2005] S.C.J. No. 28 where Binnie J. writing for the court discussed the argument that privilege was based upon a claim of necessary immunity. He went on to say at para. 29, sub para 8:

8. Proof of necessity may rest in part in “shewing that it has been long exercised and acquiesced in” (*Stockdale v. Hansard*, at p. 1189). The party who seeks to rely on the immunity provided by parliamentary privilege has the onus of establishing its existence.

...The onus of shewing that it is so lies upon the defendants, for it is certainly prima facie contrary to the common law. [*ibid.*, at p. 1189.]

The burden of proof is on those who assert it, and, for the purposes of this cause, the proof must go to the whole of the proposition... [*ibid.*, at p. 1201.]

PARLIAMENTARY PRIVILEGE APPLIES TO LEGISLATURES

The *Vaid* case also settled the question of whether parliamentary privilege applied to the legislatures of the provinces. Justice Binnie held at para. 28 that it did and relied particularly on *New Brunswick Broadcasting v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319 and *Harvey v. New Brunswick (Attorney General)*, [1996] 2 S.C.R. 876.

At para. 29, sub paras. 1, 2 and 3 Justice Binnie held:

29 While there are some significant differences between privilege at the federal level, for which specific provision is made in s. 18 of the *Constitution Act, 1867*, and privilege at the provincial level, which has a different constitutional underpinning, many of the relevant issues concerning privilege were resolved in *New Brunswick Broadcasting* and earlier cases, and there is no need to repeat the analysis here. For present purposes, it is sufficient to state a number of propositions that are now accepted both by the courts and by the parliamentary experts.

1. Legislative bodies created by the *Constitution Act, 1867* do not constitute enclaves shielded from the ordinary law of the land. “The tradition of curial deference does not extend to everything a legislative

assembly might do, but is firmly attached to certain specific activities of legislative assemblies, i.e., the so-called privileges of such bodies" (*New Brunswick Broadcasting*, at pp. 370-71). Privilege "does not embrace and protect activities of *individuals*, whether members or non-members, simply because they take place within the precincts of Parliament" (U.K., Joint Committee on Parliamentary Privilege, vol. 1, *Report and Proceedings of the Committee* (1999) ("British Joint Committee Report"), at para. 242 (emphasis in original)).

2. Parliamentary privilege in the Canadian context is the sum of the privileges, immunities and powers enjoyed by the Senate, the House of Commons and provincial legislative assemblies, and by each member individually, without which they could not discharge their functions (*Beauchesne's Rules & Forms*, at p. 11; *Erskine May*, at p. 75; *New Brunswick Broadcasting*, at p. 380).

3. Parliamentary privilege does not create a gap in the general public law of Canada but is an important part of it, inherited from the Parliament at Westminster by virtue of the preamble to the *Constitution Act, 1867* and in the case of the Canadian Parliament, through s. 18 of the same Act (*New Brunswick Broadcasting*, at pp. 374-78; *Telezone Inc. v. Canada (Attorney General)* (2004), 69 O.R. (3d) 161 (C.A.), at p. 165; and *Samson Indian Nation and Band v. Canada*, [2004] 1 F.C.R. 556, 2003 FC 975).

PRIVILEGE ASSERTED

The claim against production here is that memoranda prepared by persons at any level of government including drafts which are designated or described as "memorandum to executive council" are privileged. These are the documents requested of Deputy Minister Levesque of Business New Brunswick for inspection. These were not in the possession of the Executive Council but of Business New Brunswick. Further, Deputy Minister Levesque was requested to produce a list of documents in the possession of Business New Brunswick in any way dealing with the applications of the Atcon group of companies for financial assistance. It was not until undertakings were adopted in the Inquiry that compliance with this directive was made by Mr. Levesque.

Any claims for absolute privilege were dashed by the Supreme Court of Canada more than 25 years ago. The leading author is none other than Justice La Forest in *Carey v. The Queen in Right of Ontario*, [1986] 2 S.C.R. 637. The import of the *Carey* decision is that for the proper administration of justice it is necessary that litigants have access to all evidence that might be of assistance to the fair disposition of the issues in litigation.

Counsel from the office of the Attorney General posits as follows:

There are two reasons as to why these documents cannot be disclosed. The first relates to the fact that if these types of documents were disclosed it would lead to a decrease in the completeness and candour and frankness of documentation provided to and reviewed by Executive Council. It would affect the quality of the decisions made by Executive Council, the quality and candour of the discussions of Cabinet members, and the quality of the materials provided to Executive Council.

The second reason that this documentation cannot be provided relates to the timing of the Cabinet meetings and particularly the fact that there has been a change in government since the MEC's at issue were created. By providing access to these documents the new government would be able to obtain indirectly information to which it is not entitled to get directly. At the very least the Commissioner must, before ordering that the documents be disclosed, weigh the competing interests of government confidentiality and the proper administration of justice in light of parliamentary practices and customs.

There is, however, a third reason advanced by counsel for the Attorney General and it relates to s. 32 of the *Interpretation Act*. The argument is that even though the *Inquiries Act* gives me broad powers to compel the attendance of witnesses and to order the

production of documents there is no specific authority binding the Crown to require a witness to attend or to produce documents. S. 32 reads as follows:

32 No Act or regulation impairs or adversely affects the rights of the Crown unless it is expressly stated therein that the Crown is bound thereby.

The three arguments of the Attorney General for non production of Executive Council documents can be described as 1. The Candour argument, 2. The unauthorized information to new government argument and 3. The *Interpretation Act* argument that the *Inquiries Act* does not apply to the Crown.

I will establish the foundation for my decision that I am entitled to inspect the documents in question via the following approach:

LEGISLATION IN SUPPORT

The conflict of interest sections before the Inquiry:

Sections 4 and 15 of the *Members' Conflict of Interest Act* are pertinent to the matter before the Inquiry. Section 4 prohibits a member from participating in making a decision that the member reasonably should know gave rise to the opportunity to further the private interest of another person and section 15 requires that a member of the Executive Council who has a possible conflict of interest shall have someone else appointed to make the decision.

The matter in issue is the decision making participation of Shawn Graham at the Executive Council level that gave rise to the opportunity to further the private interest of

Alan Graham, his father, a paid director and consultant of one of the Atcon group of companies seeking financial assistance from the Province of New Brunswick.

CONFLICT OF INTEREST

4 A member shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is the opportunity to further the member's private interest or to further another person's private interest.

PROCEDURES ON CONFLICT OF INTEREST

15 A member of the Executive Council who has reason to believe that he or she has a conflict of interest with respect to a matter that requires that member's decision shall report that possible conflict to the President of the Executive Council and ask the Premier or Deputy Premier to appoint another member of the Executive Council to perform the member's duties in the matter for the purpose of making the decision, and the member who is appointed may act in the matter for the period of time necessary for the purpose.

The *Members' Conflict of Interest Act* empowering an investigation and inquiry:

S. 36 controls the mechanism of how to request an investigation for an alleged breach of the Act and s. 37 sets forth the powers of the Commissioner in dealing with the investigation of a breach.

INVESTIGATION AND INQUIRY

37(1) On receiving a request under section 36, the Commissioner may conduct an investigation with or without conducting an inquiry.

37(2) The Commissioner shall provide the member who is the subject of the investigation with reasonable notice and shall give the member an opportunity to respond to the allegation.

37(2.1) When the Commissioner conducts an investigation or an inquiry under this section, the member who is the subject of the request under section 36 shall respond promptly and completely to all of the Commissioner's questions and requests for information.

37(3) Where the Commissioner elects to conduct an inquiry under this section, the Commissioner has all the powers, privileges and immunities conferred on a commissioner under the *Inquiries Act*.

THE INQUIRIES ACT

The powers, privileges and immunities referred to in s.37(3) of the *Members' Conflict of Interest Act* are set forth in s. 4(1) the summons and order for the production of documents, s.4(2) attendance and production of documents and s.8 relevant evidence acceptable though not admissible at a trial.

4(1) Any one commissioner may by summons, in the prescribed form, require the attendance before them of any person whose evidence may be material to the subject of the inquiry, and may order any person to produce such books, papers and documents as appear necessary.

4(2) Every such person shall attend and answer all questions put to him by a commissioner touching the matters being or to be inquired into, and shall produce before the commissioners all books, papers and documents required of him, and in his custody or control.

8 The commissioners may hear and accept any relevant evidence even though it is not admissible under the rules applying to trials in The Court of Queen's Bench of New Brunswick.

THE SUPREME COURT

I adopt the argument of Gary Faloon Q.C., counsel to the Inquiry who made the following submission:

Limits of Executive Privilege

The Province's position is that historically, the Canadian democratic tradition affirms the confidentiality of conversations conducted in Executive Council meetings and that of documents and papers prepared for the Executive Council. The reason for this wholesale claim to immunity, it is often argued, is to protect

the private conversations of Cabinet members and ensure that government policy can be conceived and argued openly and candidly behind closed doors.

However, over the past 30 years, Canadian courts have taken the position that the general philosophy should be one of openness which leads to disclosure and not immunity. This started with *Smallwood v. Sparling et al*, [1982] 2 S.C.R. 686 and *Carey v. The Queen in Right of Ontario*, [1986] 2 S.C.R. 637, two Supreme Court cases in which Crown immunity was not upheld. Writing for the Court in *Carey*, La Forest J. stated at para. 46:

I am prepared to attach some weight to the candour argument but it is very easy to exaggerate its importance. Basically, we all know that some business is better conducted in private, but generally I doubt if the candidness of confidential communications would be measurably affected by the off-chance that some communication might be required to be produced for the purposes of litigation. Certainly the notion has received heavy battering in the Courts.

La Forest J. further held that there are limits to executive privilege. At paras. 52-53, referring to *U.S. v. Nixon*, 94 S.Ct. 3090 (1974), he stated:

The Court recognized the need to protect communications between high government officials. It gave some weight to the candour argument, but it also noted the importance of protecting the President from being harassed by vexatious and unnecessary subpoenas.

On the other hand, the need for confidentiality in government, the court thought, must be weighed against the historic commitment to the rule of law. The integrity of the judicial system and public confidence in it depended on full disclosure of all facts within the framework of the rules of evidence, particularly in criminal matters.

Ordering the disclosure of Cabinet documents for the Court's inspection, he went on to conclude at para. 84:

Divulgence is all the more important in our day when more open government is sought by the public. It serves to reinforce the faith of the citizen in his governmental institutions. This has important implications for the administration of justice, which is of prime concern to the courts.

See also Alan W. Bryant, Sidney N. Lederman and Michelle K. Fuerst, Sopinka, Lederman & Bryant: *The Law of Evidence in Canada*, 3rd ed., (Markham: LexisNexis, 2009), at p. 910:

In addition to concerning itself with the protection of confidential communications within certain important societal relationships, privilege may be invoked to preserve society as a whole when disclosure may jeopardize the national security of the country or impair the expeditious administration of the government [...] These categories of privilege are based upon diverse sets of external values worthy of protection even in the face of hindering the effectiveness of the trial process. Accordingly, there always exists a tension when the doctrine of privilege is invoked as it consequentially obstructs the truth-finding process. That being the natural result, the courts have not shown great eagerness to proliferate the areas of privilege. Chief Justice Warren Burger put it this way in a celebrated American case [of *Nixon*, *supra*]:

Whatever their origins, these exceptions to the demand for every man's evidence are not lightly created, nor expansively construed, for they are in derogation of the search for the truth.

Smallwood, supra involved a claim of absolute immunity from testifying before a federal public inquiry by Mr. Smallwood, a former premier of the Province of Newfoundland. His claim was for immunity from giving oral testimony and producing any documents because he was Premier, a Minister of the Crown and a member of the Executive Council. In delivering the judgment of the Court, Wilson J. held that Mr. Smallwood was a compellable witness but, more importantly, that the law with respect to documents is a rule of *relative* immunity. In applying the rule it is necessary to balance the interest in disclosure in a given case against the public interest in non-disclosure and, if the former outweighs the latter, then disclosure must be made.

Any investigation or inquiry into the propriety of the conduct of government officials is of vital importance to maintaining the democratic tradition in Canada, and any information request for those purposes should be afforded great weight. In *Canada (Attorney General) v. Almalki*, 2010 FC 1106, Mosley J. held, at para. 182:

The public interest in holding government accountable for the alleged actions and omissions of its servants is an important consideration in

this case. Mr. Justice La Forest stated the following in *Carey*, above, at page 673:

There is a further matter that militates in favour of disclosure of the documents in the present case. The appellant here alleges unconscionable behaviour on the part of the government. As I see it, it is important that this question be aired not only in the interests of the administration of justice but also for the purpose for which it is sought to withhold the documents, namely the proper functioning of the executive branch of government.

Carey, *supra* is now settled law in Canada. In *Nova Scotia (Attorney General) v. Royal & Sun Alliance Insurance Co. of Canada*, (2000) 189 N.S.R. (2d) 290 (NS S.C.), Wright J. called it, at para. 14, "[the] seminal case on the law of Cabinet privilege (now more properly called a public interest immunity) in this country".

See also *Fallowka v. Royal Oak Mines Inc.*, 1999 CarswellNWT 23 (NWT S.C.), where Vertes J. quoted from Professor P.W. Hogg's article, "Government Liability: Assimilating Crown and Subject", at (1994) 16 *Advocates Quarterly* 366:

The longstanding issue here has been the extent to which the courts could review a claim by a Minister that a document was privileged on the ground that its disclosure would be injurious to the public interest. This issue broke out into various subsidiary issues. Was the certificate of the Minister conclusive? Were the documents immune from judicial inspection? Was the need to preserve candour in the public service a sufficient ground of public interest? Were Cabinet documents in a particularly protected category? Since the Second World War, the courts of the Commonwealth have gradually tackled all these questions -- with predictable results given the tendency that I have been reporting. In Canada, the final step was taken in *Carey v. Ontario*, in which all of the above questions were answered No. The Supreme Court of Canada refused to accept a certificate of Crown privilege with respect to Cabinet documents, refused to accept that candour in the public service was a particularly important ground of public interest and remitted the claim of privilege to the trial court to inspect the documents in private and to decide whether or not they ought to be produced.

[Emphasis added]

I would add to counsel's submission to the Inquiry the case of *Babcock v. Canada (Attorney General)* [2002] S.C.J. No. 58, [2002] 3 S.C.R. 3 which quoted extensively from Justice La Forest in the *Carey* decision. Chief Justice McLachlin observed that

Cabinet confidences must be balanced against the public interest in disclosure. It then requires a certain balancing. She gave, for example, that there must be a way of determining that the information to be protected truly relates to Cabinet deliberations. As a result many jurisdictions have enacted legislation protecting cabinet confidentiality.

In New Brunswick, this has been done with respect to several Acts for example: *The Ombudsman Act*; *The Personal Health Information Privacy and Access Act*; *The Right to Information and Protection of Privacy Act*; *The Public Interest Disclosure Act*. There has been no such restriction with respect to the *Members' Conflict of Interest Act*.

Logically, the enactment of restrictive legislation would frustrate the purpose of the *Members' Conflict of Interest Act*. The Act is directed at the integrity of the members. To frustrate an inquiry into conduct which the legislature itself intends to prohibit would be inimical to the pursuit of integrity principles so clearly identified in the *Members' Conflict of Interest Act*. The Act itself is a code of conduct; the public interest must prevail.

CONVENTION-NEW GOVERNMENT-OLD GOVERNMENT

The unwritten custom, referred to as a "convention" is that when the government changes the new government does not have access to the Cabinet records of the previous government.

The Deputy Minister of Business New Brunswick refused to disclose the memoranda to executive council. His counsel from the Office of the Attorney general said in a brief to the Inquiry:

Any disclosure of MEC's to the Commissioner would be contrary to the conventions of parliamentary democracy which dictate that a new government does not have access to the Cabinet records of a previous government. To allow access to Cabinet documents because a member of a new government filed a complaint under the *Members' Conflict of Interest Act* would allow the new government access to documents to which they are not entitled. It would interfere with the public interest by altering well established principles relating to past Cabinet confidences and it would permit the new government to obtain indirectly information to which it is not permitted to get directly.

I am unable to fathom any persuasive logic for the argument. Under the *Members' Conflict of Interest Act* I am a sworn officer of the Legislative Assembly, chosen by unanimous consent for the appointment. Everything that comes through my office is confidential. The Inquiry is closed and the Inquiry remains confidential until my report is laid before the Legislative Assembly. Subsequent to that all documents are destroyed.

I fail to appreciate the argument that somehow the new government will obtain sensitive policy information of the former government through my inspection of documents or any use thereof dealing with the Atcon group of companies' applications for financial assistance that relate to the request for an investigation under s. 4 of the Act. Financial assistance was authorized. The question is whether Shawn Graham participated in making a decision in the execution of his office when he reasonably should have known

that it gave an opportunity to further the private interest of his father, a director and consultant of Vanerply AB.

As Commissioner of the Inquiry, I am not an agent of the government of the day. I report to the Legislative Assembly. I am concerned only with the facts that will lead me to a conclusion of whether there was a breach of the Act.

I adopt the argument of counsel to the Inquiry with respect to the “convention”:

The Convention with Respect to Confidences of a Previous Cabinet

The nature and origins of constitutional conventions were canvassed by Iacobucci, J. in *Ontario English Catholic Teachers' Assn. v. Ontario (Attorney General)*, [2001] 1 S.C.R. 470 (S.C.C.). Writing for a unanimous Court, he stated at para. 65:

Constitutional conventions relate to the principles of responsible government, not to how a particular power, which is clearly within a provincial government's jurisdiction, is to be exercised. The nature of constitutional conventions was reviewed by this Court in *Patriation Reference*, *supra*, at pp. 878 and 880:

It was apparently Dicey who, in the first edition of his *Law of the Constitution*, in 1885, called them the “conventions of the constitution”, (see W. S. Holdsworth, “The Conventions of the Eighteenth Century Constitution” (1932), 17 Iowa Law Rev. 161), an expression which quickly became current. What Dicey described under these terms are the principles and rules of responsible government, several of which are stated above and which regulate the relations between the Crown, the prime minister, the cabinet and the two Houses of Parliament. These rules developed in Great Britain by way of custom and precedent during the nineteenth century and were exported to such British colonies as were granted self-government.

A constitutional convention cannot be applied so as to strike down or overrule a clear and specific law. There is clear authority from the Supreme Court to this

effect; whatever their other uses may be, constitutional conventions cannot be used to invalidate express and definite legal rules. See *Re: Resolution to amend the Constitution*, [1981] 1 S.C.R. 753 (S.C.C.), at pp. 880-1:

Perhaps the main reason why conventional rules cannot be enforced by the Courts is that they are generally in conflict with the legal rules which they postulate and the Courts are bound to enforce the legal rules. The conflict is not of a type which would entail the commission of any illegality. It results from the fact that legal rules create wide powers, discretions and rights which conventions prescribe should be exercised only in a certain limited manner, if at all.

The law in this respect was subsequently affirmed by the Supreme Court of Canada in *Reference Re Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 98:

The respective roles of the courts and political actors in discharging the constitutional obligations we have identified follows ineluctably from the foregoing observations. In the *Patriation Reference*, a distinction was drawn between the law of the Constitution, which, generally speaking, will be enforced by the courts, and other constitutional rules, such as the conventions of the Constitution, which carry only political sanctions.

[Emphasis added]

The convention of confidentiality on the basis of which the D.M. is refusing the production of the MECs only relates to disclosure to a new government of the confidences of a previous one. Here, it is not a new administration, but the Commissioner who seeks to examine those documents, pursuant to the express powers and privileges granted to him by *the Act* and the *Inquiries Act*. In addition, any such disclosure is governed by the confidentiality provisions in Sections 33 and 40 of the *Act*,

Furthermore, it is not established that such a convention has been recognized by the Courts in Canada. As already discussed even if it were, it does not have the force of law. More importantly, however, because of the nature of the Commissioner's functions, denying him access to the MECs would defeat the very purpose of *the Act*. Particularly germane to the within discussion are the words of Hugessen, J. in *Canada (Auditor General) v. Canada (Minister of Energy, Mines & Resources)*, [1987] 1 F.C. 406 (C.A.) at para. 73:

The convention of confidentiality, whereby the members of one administration are prohibited from seeing (and a fortiori from disclosing) the confidences of a previous administration of a different political stripe, is another matter. The trial Judge found that such convention exists. I am not entirely sure that he was right. But I do not think that it is necessary to express a definitive opinion on the point. The convention, if it exists, is no more than that. Convention, by definition, must give way before an express text of law.

[Emphasis added]

He then continued:

Indeed, by the very nature of his functions, the Auditor General is inquiring into events after they have taken place, sometimes many years later. It is quite simply unthinkable that his inquiries could be frustrated by a change of government.

[Emphasis added]

COMMISSIONER'S JURISDICTION

Although s. 4 of the *Inquiries Act* grants the power to summons witnesses and order the production of documents counsel for the Deputy Minister of Business New Brunswick, representing the Attorney General argues that it does not apply to executive council documents because of s. 32 of the *Interpretation Act*:

32. No Act or regulation impairs or adversely affects the rights of the Crown unless it is expressly stated therein that the Crown is bound thereby.

In answer to the position advanced by counsel for the Deputy Minister (the D.M.), I adopt the argument put forward by Mr. Faloon counsel to the Inquiry as follows:

The D.M. has taken the position that the Commissioner lacks the jurisdiction to order the production of the MECs, [memorandum to executive council] on the grounds that there is no provision in *the Act* which states that the Crown is bound by it. The D.M. relies on s. 32 of the *Interpretation Act*, R.S.N.B. 1973, c. I-13 (hereinafter the "*Interpretation Act*"), which reads as follows:

32. No Act or regulation impairs or adversely affects the rights of the Crown unless it is expressly stated therein that the Crown is bound thereby.

The D.M. argues that access to Executive Council documents is not expressly denied in *the Act* because it is unnecessary: unlike the statutes discussed in the preceding section, *the Act* is not binding on the Crown, and such a provision would be superfluous.

It must be noted that there are several dozen New Brunswick statutes which include a section expressly stating that “[t]his Act binds the Crown”. (See *Limitation of Actions Act*, S.N.B. 2009, c. L-8.5, *Endangered Species Act*, S.N.B. 1996, c. E-9.101, *Public Health Act*, S.N.B. 1998, c. P-22.4, *inter alios*).

There is no such language in the provisions of the *Ombudsman Act*, the *Personal Health Information Privacy and Access Act*, S.N.B. 2009, c. P-7.05, the *Right to Information and Protection of Privacy Act*, S.N.B. 2009, c. R-10.6 or the *Public Interest Disclosure Act*, S.N.B. 2007, c. P-23.005. Under a strict construction of s. 32 of the *Interpretation Act*, these statutes do not bind the Crown, and the D.M.’s argument fails.

In the alternative, if it is determined that s. 32 of the *Interpretation Act* should be given a more liberal reading, it is submitted that *the Act* is binding on the Crown, on the basis that there is a clear intention to bind manifest from the very terms of *the Act*, and because its purpose would be wholly frustrated if the Crown were not bound by it.

Until relatively recently, it could have been argued on the basis of a clear line of authority that an explicit statement indicating that the Crown was to be bound was necessary in order to overcome the presumption of immunity. A starting point in this discussion is s. 17 of the federal *Interpretation Act*, R.S.C. 1985, c. I-21, which states:

17. No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty’s rights or prerogatives in any manner, except as mentioned or referred to in the enactment.

This provision of the federal *Interpretation Act* was altered in 1967, when a requirement of an "express statement", as found in the New Brunswick *Interpretation Act*, was changed to a "mention" or "reference". In *Alberta v. Canada (Canadian Transport Commission)*, [1978] 1 S.C.R. 61 (S.C.C.) (hereinafter the "PWA" case), the Federal Court of Appeal found the change in wording to be significant. It held the revised wording to be wide enough to permit the return of the "necessary implication" exception which existed at common law. In the Supreme Court of Canada, Laskin C.J.C., speaking for a majority of the court on this point, came to a different conclusion. At pp. 267-268, he stated:

I am unable to agree with the conclusion of the Federal Court of Appeal that the substitution of the words "except only as therein mentioned or referred to" for the words "unless it is expressly stated therein that Her Majesty shall be bound" restores "necessary implication". It seems to me, on the contrary, that "necessary implication" is excluded if it is necessary that the Crown be mentioned or referred to in legislation before it becomes binding on the Crown.

Six years later, in *R. v. Eldorado Nuclear Ltd.*, [1983] 2 S.C.R. 551 (S.C.C.), Dickson J. stated at p. 558:

Parliament has followed the lead of the common law, and taken the development one step further. Section 16 [now s. 17] of the *Interpretation Act* removes even the necessary implication exception.

Those decisions provided a compelling basis for the argument that, unlike the position at common law, the Crown was to be conclusively considered immune from a statute in the absence of an explicit statement in the statute to the contrary. In the following years, however, a second line of authority overtook that argument and greatly narrowed the limits of the presumption of immunity.

The second line of cases begins with *R. v. Ouellette*, [1980] 1 S.C.R. 568 (S.C.C.). Beetz J., who delivered the judgment of the court, noted that the amended form of s. 16 of the *Interpretation Act* no longer contained the word "expressly", as it had prior to 1967 and stated:

This section does not exclude the rule by which the various provisions of a statute are each interpreted in light of the others, and it is possible that Her Majesty may be implicitly bound by legislation if that is the

interpretation which the legislation must be given when it is placed in its context. In my view, this is the interpretation that must be given to ss. 758 and 771(3) of the *Criminal Code*, when they are read not in isolation but in the context of Part XXIV on summary convictions.

On the face of it, the reasoning in *Ouellette, supra* was in conflict with what had been said in *PWA* and *Eldorado, supra*. That conflict did not go unnoticed when the Supreme Court revisited the issue of Crown immunity in *Alberta Government Telephones v. Canada (Canadian Radio-Television & Telecommunications Commission)*, [1989] 2 S.C.R. 225. Dickson C.J.C. delivered the judgment of the majority of the court. At p. 276, he set out the issue raised by the wording of what is now s. 17 of the federal *Interpretation Act*:

As noted earlier, s. 16 of the *Interpretation Act* was amended in 1967-68. The earlier version required that it be "expressly stated" that the Crown is to be bound. The newly substituted version provides that a Crown will not be bound by statute "except only as therein mentioned or referred to". At issue here is the explicitness required by the new wording of s. 16 to bind the Crown.

After noting that the common law recognized an exception to the requirement of an express statement where an intention to bind the Crown arose as a matter of necessary implication from the terms of the statute, the Chief Justice reviewed what the Supreme Court had previously said as to whether that exception had survived the codification of the presumption. He then stated at pp. 280-281:

Section 16 requires a clear Parliamentary expression of an intention to bind the Crown. This does not necessarily require that a federal enactment requires a section stating "This Act shall bind Her Majesty" (although such a provision, as a matter of legislative drafting, would put the issue beyond doubt).

In my view, in light of *PWA* and *Eldorado*, the scope of the words "mentioned or referred to" must be given an interpretation independent of the supplanted common law. [...]. It seems to me that the words "mentioned or referred to" in s. 16 are capable of encompassing: (1) expressly binding words ("Her Majesty is bound"); (2) a clear intention to bind which, in *Bombay* terminology, "is manifest from the very terms of the statute", in other words, an intention revealed when provisions are read in the context of other textual provisions, as in *Ouellette, supra*; and (3) an intention to bind where the purpose of the statute would be "wholly frustrated" if the government were not bound, or, in other words, if an absurdity (as opposed to simply an undesirable result) were produced. These three points should provide a guideline for when a statute has clearly conveyed an intention to bind the Crown.

This view was further endorsed by the judgment of the Supreme Court of Canada in *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3. The issue was whether the Crown in right of Alberta was bound by the *Navigable Waters Protection Act*, a federal statute. At p. 50, La Forest J., speaking for the majority, stated:

It is agreed by all concerned that there are no express words in the *Navigable Waters Protection Act* binding the Crown, and it therefore remains to be decided whether the Crown is bound by necessary implication.

[Emphasis added.]

After citing Chief Justice Dickson's statements in *Alberta Government Telephones, supra* concerning the scope of s. 17, and noting that any uncertainty in the law on these points was put to rest by that decision, La Forest J. held:

In my view, this passage makes it abundantly clear that a contextual analysis of a statute may reveal an intention to bind the Crown if one is irresistibly drawn to that conclusion through logical inference.

Significantly, he went on to describe in very wide terms the context within which the analysis was to be made. It was not to be narrowly construed, but rather it must include “the circumstances which led to the enactment of the statute and the mischief to which it was directed”.

For the purposes of the within discussion, two important points emerge from the cases dealing with s. 17 of the federal *Interpretation Act*. First, the Supreme Court of Canada has rejected the proposition that the common law exceptions to the presumption of Crown immunity survived codification. Second, the rejection of that proposition has not resulted in an expansion of the scope of Crown immunity because the Supreme Court has poured into the words of s. 17 the content of the common law exceptions. The relevance of those developments to the construction of s. 32 of the New Brunswick *Interpretation Act* will be examined next.

In *LeBlanc v. Mollins* (1984), 54 N.B.R. (2d) 57 (Q.B.), aff'd (1984), 54 N.B.R. (2d) 329 (C.A.), Meldrum, J. held that s. 32 of the *Interpretation Act* should not be interpreted literally, and stated at para. 14:

In *Bombay Province v. Bombay Municipal Corporation*, (1947) A.C. 58, Lord du Parc in enunciating the principle said at p. 61:

The general principle to be applied in considering whether or not the Crown is bound by general words in a statute is not in doubt. The maxim of the law in early times was that no statute bound the Crown unless the Crown was expressly named therein.... But the rule so laid down is subject to at least one exception. The Crown may be bound, as has often been said, 'by necessary implication'. If, that is to say, it is manifest from the very terms of the statute, that it was the intention of the Legislature that the Crown should be bound, then the result is the same as if the Crown has been expressly named...

and at page 63:

If it can be affirmed that, at the time when the statute was passed and received the royal sanction, it was apparent from its terms that its beneficial purpose must be wholly frustrated unless the Crown were bound, then it may be inferred that the Crown has agreed to be bound. Their Lordships will add that when the court is asked to draw this inference, it must always be remembered that, if it be the intention of the legislature that the Crown shall be bound, nothing is easier than to say so in plain words.

One can also look for guidance in the more recent Ontario jurisprudence. The relevant portions of s. 11 of the Ontario *Interpretation Act*, R.S.O. 1990, c. I.11 employ the same language as s. 32 of its New Brunswick counterpart:

The Crown

11. No Act affects the rights of Her Majesty, Her heirs or successors, unless it is expressly stated therein that Her Majesty is bound thereby.

In *R v. Greening*, 1992 CarswellOnt 57, MacDonnell J. acknowledged the difficulties in attempting to simply import into Ontario the broad scope of exceptions to the presumption of Crown immunity which have been developed by the Supreme Court of Canada in relation to s. 17 of the federal *Interpretation*

Act. After canvassing the changes of the wording of the federal statute and the evolution of the jurisprudence in respect thereof, he stated at para. 77:

The issue which must be confronted, therefore, is whether the statutory exception provided for in s. 11 is broad enough to encompass indications of legislative intention other than specific statutory assertion. In my view, it is. As noted above, there are similarities between the federal and Ontario provisions. The basis of the exception to the presumption of immunity is the same: the presumption will be displaced in the face of a contrary intention on the part of the legislature. *Both* provisions might be read as excluding an implicit contrary intention, but that interpretation has been rejected in relation to the federal provision. In *Alberta Government Telephones*, supra, at p. 280, Dickson C.J.C. acknowledged that "[s]ection [17] requires a clear Parliamentary expression of an intention to bind the Crown", but further stated that it "ought not to be construed as an overbroad extension of state immunity, particularly in light of s. 3(1) of the [federal] *Interpretation Act*..." [p. 281]. The reference to s. 3(1) should not be overlooked. It provides, in part, that "[e]very provision of this Act extends and applies, *unless a contrary intention appears*, to every enactment..." [emphasis added]. Dickson C.J.C. utilized this provision not to override s. 17 but rather to assist in divining its meaning. Section 3(1) reflects the fundamental importance to our constitutional system of the principle of legislative supremacy, and it appears to have buttressed Dickson C.J.C.'s decision to give s. 17 a reading which was generous to implicit but clear expressions of legislative intent. The Ontario *Interpretation Act* has a provision similar to s. 3(1) of the federal Act. Section 1(1) provides, in part, as follows:

The provisions of this Act apply to every Act of the Legislature contained in these Revised Statutes or here-after passed, except in so far as any such provision,

(a) is inconsistent with the intent or object of the Act; ...

It is noted that the New Brunswick *Interpretation Act* contains a similar provision:

1(1) This Act extends and applies to every enactment and regulation except in so far as it

(a) is inconsistent with the intent or object of the enactment or regulation, ...

MacDonnell J. concluded at paras. 79-80:

A straightforward and explicit statement in an enactment that the Crown is bound by the enactment will no doubt satisfy the requirements of s. 11, but the wording of the section is capable of encompassing less explicit expressions of intent. The content of an

enactment, its text, and its context *may* powerfully demonstrate the legislature's intention that the Crown is to be bound by the enactment.

In my opinion, therefore, the test under both the federal and provincial Acts is substantially the same: the presumption of Crown immunity will yield to a clear expression of legislative intent to the contrary, whether the intent is communicated explicitly or implicitly. This result is achieved by a large and liberal reading of the language of s. 17 and s. 11 of the federal and Ontario Acts.

The test under the New Brunswick *Interpretation Act* is therefore [the] same as the one laid out by Dickson C.J.C. in *Alberta Government Telephones*, *supra*. The following considerations apply:

- (1) Are there expressly binding words (e.g. "Her Majesty is bound");
- (2) Would the purpose of the statute be wholly frustrated if the government were not bound; and
- (3) Is there a clear intention to bind which is manifest from the very terms of the statute?

In general terms, the purpose of *the Act* is to ensure that no Member of the Legislative Assembly or the Executive Council shall make a decision or participate in making a decision in the execution of his office if in the making of the decision there is the opportunity to further the member's or another person's private interest. It is beyond doubt that the vast majority – if not virtually all – of the documents relevant to an inquiry of a member of Cabinet would be Executive Council documents. Not making those documents available to the Commissioner constitutes not only an inconvenience or undesirable result, but would render any inquiry futile, thus wholly frustrating the purpose of the *Act*. It is submitted that for these reasons alone, the *Act* is binding on the Crown.

In addition, certain provisions of *the Act* (in particular s. 16) impose restrictions not only on Members, but specifically on the Executive Council itself. There is a clear intention to bind the Crown which is manifest from the terms of *the Act*.

INSPECTION RIGHTS

From a review of the legislation and the judicial precedents, I conclude that a Commissioner, acting under the authority provided for in the *Members' Conflict of Interest Act* and the *Inquiries Act* of New Brunswick as well as the precedents cited with respect to the decisions of the Supreme Court of Canada, empower a Commissioner to require persons and entities to produce for inspection all manner of documents in their possession, care or control which relate to the issues and matters before the inquiry and for witnesses to testify as to their knowledge of those documents. In using the word "documents" I do not mean to confine the word, I mean it to include correspondence, electronic mail, memoranda, notes, written visual and oral transcriptions, applications, statements of every kind, evaluations, reports and any other material in any way related to the allegation before the inquiry.

I therefore order you, Bill Levesque, and you, Byron James, as persons having custody, care or control of the documents in your capacities as Deputy Ministers of the Government of the Province of New Brunswick and for which you have been summoned before this Inquiry to produce for my inspection the many items listed in your respective summonses and which you have not already provided.

Given under my hand this 28th day of January, 2011

A handwritten signature in black ink, appearing to read "P.A.A. Ryan". The signature is fluid and cursive, with the first name "Patrick" being more legible than the last name "Ryan".

The Honourable Patrick A.A. Ryan, Q.C.
Commissioner of this Inquiry

**VU LA LOI SUR LES CONFLITS D'INTÉRÊTS DES DÉPUTÉS ET DES MEMBRES DU CONSEIL EXÉCUTIF, L.N.-B. 1999, ch. M-7.01
ET VU LA LOI SUR LES ENQUÊTES, L.R.N.-B. 1973, ch. I-11, art. 4**

ET DANS L'AFFAIRE D'UNE INVESTIGATION ET D'UNE ENQUÊTE sur la contravention à l'article 4 de la *Loi sur les conflits d'intérêts des députés et des membres du Conseil exécutif* qu'aurait commise Shawn Graham, membre du Conseil exécutif, en participant à l'approbation par le Cabinet de garanties consenties à un établissement financier canadien en faveur d'Atcon Holdings Inc. pendant que son père, Alan Graham, était un des administrateurs et experts-conseils rémunérés du groupe de compagnies Atcon ou d'une de ses filiales.

EXAMEN DES DOCUMENTS - DÉCISION PROVISOIRE

Il me semble y avoir un malentendu en ce qui concerne l'objet d'une enquête. D'abord et avant tout, permettez-moi de préciser qu'une enquête n'est pas un procès. Il n'y a pas de poursuite en justice devant moi. La procédure suivie dans le cadre d'une enquête n'est pas accusatoire. Les témoins qui sont appelés à témoigner et à produire des documents établissent les faits devant le Commissaire afin que celui-ci puisse rédiger un rapport à l'intention de l'Assemblée législative. Mon mandat consiste à examiner d'une façon structurée et indépendante les faits et événements qui ont amené un membre de l'Assemblée législative à formuler une allégation de conflit d'intérêts contre un autre membre de l'Assemblée législative. Au bout du compte, l'enquête illustre et met à l'épreuve la confiance du public envers les institutions gouvernementales.

La présente enquête a pour objet une demande par affidavit fait sous serment le 7 avril 2010 en vue de la tenue d'une investigation en vertu de la *Loi sur les conflits d'intérêts des députés et des membres du Conseil exécutif* sur une allégation selon laquelle Shawn Graham, membre et président du Conseil exécutif du Nouveau-Brunswick, était en conflit d'intérêts lorsqu'il a participé à des réunions du Conseil exécutif en vue de l'approbation de garanties d'aide financière de plusieurs millions de dollars en faveur du groupe de compagnies Atcon pendant que son père, Alan Graham, était un des

administrateurs et experts-conseils de Vanerply AB, une des compagnies appartenant au groupe Atcon, pendant les années 2008 et 2009.

L'ex-premier ministre a officiellement répondu qu'il n'avait aucun motif raisonnable de croire qu'il était en situation de conflit d'intérêts lorsqu'il s'est penché sur ces garanties.

L'investigation a progressé jusqu'à ce que le sous-ministre d'Entreprises Nouveau-Brunswick, Bill Levesque, omette de répondre à des demandes répétées de renseignements et de produire des documents pertinents dont il avait la garde ou le contrôle. Ces réponses négatives m'ont obligé à élargir l'investigation pour en faire une investigation accompagnée d'une enquête. M. Levesque a été cité à témoigner.

À la barre, M. Levesque a refusé de produire différentes ébauches de mémoires au Conseil exécutif, ou de discuter du contenu de ces ébauches, qui ont été préparées par le personnel d'Entreprises Nouveau-Brunswick pendant que les demandes d'aide financière d'Atcon franchissaient les nombreuses étapes du processus d'examen des demandes au sein d'Entreprises Nouveau-Brunswick avant de parvenir au Conseil exécutif. Les demandes, qui s'établissaient à 50 000 000 \$, ont uniformément été rejetées à tous les niveaux d'Entreprises Nouveau-Brunswick mais ont été approuvées par le Conseil exécutif. Un décret en conseil a été rédigé le 26 mars 2009 relativement aux 50 000 000 \$ en question. Le refus de produire des documents ou de témoigner est fondé sur la revendication d'un privilège.

Shawn Graham prétend qu'Alan Graham a été un des administrateurs de Vanerply AB pendant environ neuf ou dix ans jusqu'à ce qu'il démissionne en mai 2009, date qui est ultérieure au décret en conseil.

Le groupe de compagnies Atcon a été mis en faillite et c'est le Nouveau-Brunswick qui doit payer. Bien que certaines sommes puissent être recouvrées, on en est encore à calculer les pertes et à en débattre devant les tribunaux et elles pourraient excéder les engagements prévus de 50 000 000 \$.

LES AVOCATS

Pendant toute la durée de l'investigation et de l'enquête, le procureur général du Nouveau-Brunswick a fourni des avocats aux employés actuels et aux anciens employés du gouvernement et ce, que les témoins ou témoins éventuels aient été des employés des ministères ou des employés au sein du Conseil exécutif. Le procureur général est membre du Conseil exécutif. Cela peut fort bien donner à penser qu'il existe un conflit d'intérêts systémique au sein du Cabinet du procureur général du fait que des avocats conseillent le personnel à différents niveaux ministériels et conseillent ensuite le Conseil exécutif sur les mêmes questions juridiques lorsque celles-ci finissent par se rendre au dernier niveau. Dans certains cas, c'est le même avocat, en raison d'une certaine connaissance du dossier ou de son expertise, qui a comparu et donné des conseils aux différents niveaux. Le conflit consiste dans la pollinisation croisée à laquelle se livrent les avocats du Cabinet du procureur général lorsqu'ils donnent des avis juridiques aux différents niveaux de la bureaucratie et au Conseil exécutif alors qu'ils ont des intérêts divergents.

L'ex-premier ministre est représenté par Allison Whitehead, c.r., ou, au besoin, par un associé du même cabinet d'avocats.

LA CHARGE DE LA PREUVE

C'est à la partie qui invoque son existence qu'incombe la charge d'établir un privilège. En l'espèce, cette charge incombe au Conseil exécutif ou à l'entité qui entend représenter le Conseil exécutif, savoir le procureur général du Nouveau-Brunswick. L'application de cette charge de la preuve remonte à aussi loin que l'arrêt *Stockdale c. Hansard* (1839), 9 Ad & E 1, 112 E.R. 1112 et la Cour suprême du Canada y a souscrit dans l'arrêt *Canada (Chambre des communes) c. Vaid*, [2005] A.C.S. n° 28, où le juge Binnie, qui rendait la décision de la Cour, a examiné l'argument voulant que le privilège ait comme fondement la revendication d'une indispensable immunité. Il a ensuite ajouté ceci, au par. 29, sous-par. 8 :

8. Pour satisfaire au critère de nécessité, il faut notamment [TRADUCTION] « démontrer [que le privilège] est depuis longtemps exercé et reconnu » (*Stockdale c. Hansard*, p. 1189). La partie qui invoque l'immunité que confère le privilège parlementaire a le fardeau d'en établir l'existence.

[TRADUCTION] . . . Les défendeurs ont la charge d'établir qu'il en est ainsi, parce qu'il y a assurément à première vue contradiction avec la common law. [*Ibid.*, p. 1189]

Le fardeau de la preuve incombe à la partie qui revendique [le privilège] et tous les éléments de l'allégation doivent être étayés par la preuve . . . [*Ibid.*, p. 1201]

LE PRIVILÈGE PARLEMENTAIRE S'APPLIQUE AUX ASSEMBLÉES LÉGISLATIVES

L'arrêt *Vaid* a également tranché la question de savoir si le privilège parlementaire s'appliquait aux assemblées législatives provinciales. Le juge Binnie a statué, au par. 28, qu'il leur était applicable et s'est plus particulièrement appuyé sur les arrêts *New Brunswick Broadcasting Co. c. Nouvelle-Écosse (Président de l'Assemblée législative)*, [1993] 1 R.C.S. 319 et *Harvey c. Nouveau-Brunswick (Procureur général)*, [1996] 2 R.C.S. 876

Au paragraphe 29, sous-paragraphe 1, 2 et 3, le juge Binnie a tiré les conclusions suivantes :

29 Malgré des différences notables entre le privilège dont jouit le Parlement fédéral, expressément prévu à l'art. 18 de la *Loi constitutionnelle de 1867*, et celui que possèdent les assemblées législatives provinciales, dont le fondement constitutionnel est différent, beaucoup de questions pertinentes en matière de privilège ont été résolues dans *New Brunswick Broadcasting* et d'autres arrêts antérieurs. Il n'est donc pas nécessaire d'en reprendre ici l'analyse. Il suffira, pour trancher le présent pourvoi, d'énoncer un certain nombre de propositions maintenant acceptées tant par les tribunaux que par les spécialistes du domaine parlementaire.

1. Les organismes législatifs créés par la *Loi constitutionnelle de 1867* ne constituent pas des enclaves à l'abri de l'application du droit commun du pays. « La tradition de retenue judiciaire ne s'applique pas à tous les actes susceptibles d'être accomplis par une assemblée législative, mais se rattache fermement à certaines de ses activités spécifiques, c'est-à-dire à ce qu'on appelle les privilèges de ces organismes » (*New Brunswick Broadcasting*, p. 371). Le privilège [TRADUCTION] « n'englobe pas ni ne protège les activités des individus, qu'ils soient ou non membres de la Chambre, du seul fait qu'elles sont exercées dans l'enceinte parlementaire » (R.-U., Joint Committee on Parliamentary Privilege, *Report and Proceedings of the Committee* (1999) (« rapport du comité mixte britannique »), par. 242 (en italique dans l'original)).

2. Dans le contexte canadien, le privilège parlementaire est la somme des privilèges, immunités et pouvoirs dont jouissent le Sénat, la Chambre des communes et les assemblées législatives provinciales ainsi que les membres de chaque Chambre individuellement, sans lesquels ils ne pourraient s'acquitter de leurs fonctions (*Jurisprudence parlementaire de Beauchesne*, p. 11; *Erskine May*, p. 75; *New Brunswick Broadcasting*, p. 380).

3. Le privilège parlementaire ne crée pas un hiatus dans le droit public général du Canada; il en est plutôt une composante importante, héritée du Parlement du Royaume-Uni en vertu du préambule de la *Loi constitutionnelle de 1867* et, dans le cas du Parlement du Canada, en vertu de l'art. 18 de cette même loi (*New Brunswick Broadcasting*, p. 374-378; *Telezone Inc. c. Canada (Attorney General)* (2004), 69 O.R. (3d) 161 (C.A.), p. 165; et *Nation et bande indienne de Samson c. Canada*, [2004] 1 R.C.F. 556, 2003 CF 975).

LE PRIVILEGE INVOQUÉ

Le refus de produire les documents est fondé, en l'espèce, sur le fait que les mémoires préparés par des personnes à quelque niveau du gouvernement que ce soit, y compris des ébauches qui sont désignées ou décrites sous le nom de [TRADUCTION] « mémoire au Conseil exécutif », seraient privilégiés. Il s'agit des documents qui ont été demandés au sous-ministre Levesque, d'Entreprises Nouveau-Brunswick, en vue de leur examen. Ils n'étaient pas en la possession du Conseil exécutif mais d'Entreprises Nouveau-Brunswick. De plus, le sous-ministre Levesque a été prié de produire une liste des documents se trouvant en la possession d'Entreprises Nouveau-Brunswick et traitant de quelque façon que ce soit des demandes du groupe de compagnies Atcon en vue d'obtenir une aide financière. Ce n'est que lorsque des engagements ont été pris dans le cadre de l'enquête que M. Levesque s'est plié à cette directive.

Toute revendication de privilège absolu a été écartée par la Cour suprême du Canada il y a plus de vingt-cinq ans. L'auteur qui fait autorité en la matière n'est nul autre que le juge La Forest dans l'arrêt *Carey c. Ontario*, [1986] 2 R.C.S. 637. Le sens qui se dégage de la décision *Carey* est qu'il est nécessaire à la bonne administration de la justice que les justiciables puissent obtenir tous les éléments de preuve susceptibles de favoriser le règlement équitable des questions en litige.

L'avocat du Cabinet du procureur général avance les prétentions suivantes :

[TRADUCTION]

Il y a deux raisons pour lesquelles ces documents ne peuvent être divulgués. La première tient au fait que si ces documents étaient divulgués, il s'ensuivrait une diminution de l'exhaustivité et de la franchise de la documentation fournie au Conseil exécutif et examinée par lui. Cela aurait une incidence sur la qualité des décisions prises par le Conseil exécutif, sur la qualité et la franchise des discussions des membres du Cabinet et sur la qualité des documents fournis au Conseil exécutif.

La deuxième raison pour laquelle ces documents ne peuvent être produits concerne le moment où ont été tenues les réunions du Cabinet et tout particulièrement le fait qu'il y a eu un changement de gouvernement depuis que les mémoires au Conseil exécutif en question ont été créés. Si l'on autorisait l'accès à ces documents, le nouveau gouvernement pourrait obtenir indirectement ce qu'il ne peut pas obtenir directement. Le Commissaire devrait à tout le moins, avant d'ordonner la divulgation, sopeser les intérêts divergents que sont la confidentialité en matière gouvernementale et la bonne administration de la justice à la lumière des usages et coutumes parlementaires.

L'avocat du procureur général avance toutefois une troisième raison qui se rapporte à l'art. 32 de la *Loi d'interprétation*. Selon cet argument, même si la *Loi sur les enquêtes* me confère de vastes pouvoirs qui m'autorisent à assigner des témoins à comparaître et à ordonner la production de documents, il n'y a aucun pouvoir spécifique qui lie l'État pour ce qui concerne l'assignation d'un témoin à comparaître ou à produire des documents. L'article 32 est ainsi rédigé :

32 Aucune loi ni aucun règlement ne porte atteinte aux droits de la Couronne ni n'a d'effets défavorables sur ceux-ci sauf s'il est expressément stipulé que la Couronne est liée par cette loi ou ce règlement.

Les trois arguments du procureur général contre la production des documents du Conseil exécutif peuvent être ainsi résumés : 1. l'argument relatif à la franchise; 2. l'argument relatif à la communication au nouveau gouvernement de renseignements auxquels l'accès est interdit et 3. l'argument fondé sur la *Loi d'interprétation* selon lequel la *Loi sur les enquêtes* ne s'applique pas à l'État.

J'établirai le fondement de ma décision selon laquelle j'ai le droit d'examiner les documents en question en empruntant la démarche suivante :

LES TEXTES LÉGISLATIFS QUI FONDENT MA DÉCISION

Les dispositions de la *Loi sur les conflits d'intérêts* dont est saisie la commission d'enquête :

Les articles 4 et 15 de la *Loi sur les conflits d'intérêts des députés et des membres du Conseil exécutif* sont pertinents pour ce qui concerne l'affaire dont est saisie la commission d'enquête. L'article 4 interdit à un député ou à un membre du Conseil exécutif de participer à la prise d'une décision qui, comme il devrait raisonnablement le savoir, peut servir les intérêts privés d'une autre personne et l'article 15 prescrit qu'un membre du Conseil exécutif qui a un conflit d'intérêts possible doit demander que quelqu'un d'autre soit nommé afin de prendre la décision.

La question en litige est la participation de Shawn Graham à la prise d'une décision, au niveau du Conseil exécutif, qui pouvait servir les intérêts privés d'Alan Graham, son père, un des administrateurs et experts-conseils rémunérés du groupe de compagnies Atcon, lequel sollicitait l'aide financière de la Province du Nouveau-Brunswick.

CONFLIT D'INTÉRÊTS

4 Lorsqu'il remplit ses fonctions, un député ou un membre du Conseil exécutif ne doit pas prendre de décision ou participer à la prise de décision qui, comme il le sait ou

devrait raisonnablement le savoir, peut servir ses intérêts privés ou ceux d'une autre personne.

[...]

PROCÉDURE EN MATIÈRE DE CONFLIT D'INTÉRÊTS

15 Un membre du Conseil exécutif qui a des motifs raisonnables de croire qu'il a un conflit d'intérêts dans une affaire qui exige sa décision doit rapporter le conflit possible au président du Conseil exécutif et demander au Premier ministre ou au Vice-premier ministre de nommer un autre membre du Conseil exécutif pour remplir ses fonctions dans l'affaire afin de prendre la décision et le membre du Conseil exécutif qui est nommé peut remplir ses fonctions dans l'affaire pour la période nécessaire à cette fin.

Les dispositions de la *Loi sur les conflits d'intérêts des députés et des membres du Conseil exécutif* qui autorisent la tenue d'une investigation et d'une enquête :

L'article 36 régit le mécanisme qui permet de demander une investigation sur une contravention alléguée à la *Loi* et l'article 37 énonce les pouvoirs conférés au Commissaire lorsqu'il mène une investigation sur une contravention à la *Loi*.

INVESTIGATION ET ENQUÊTE

37(1) Lorsqu'il reçoit une demande en vertu de l'article 36, le Commissaire peut faire une investigation tout en menant ou non une enquête.

37(2) Le Commissaire doit fournir au député ou au membre du Conseil exécutif qui fait l'objet de l'investigation un avis raisonnable et doit lui donner la possibilité de répondre à l'allégation.

37(2.1) Lorsque le Commissaire mène une investigation ou une enquête en vertu du présent article, le député ou le membre du Conseil exécutif qui fait l'objet de la demande en vertu de l'article 36 doit répondre promptement et de manière exhaustive à toutes les questions et demandes de renseignements du Commissaire.

37(3) Lorsque le Commissaire choisit de mener une enquête en vertu du présent article, le Commissaire a tous les pouvoirs, privilèges et immunités dont dispose un commissaire en vertu de la *Loi sur les enquêtes*.

LA LOI SUR LES ENQUÊTES

Les pouvoirs, privilèges et immunités mentionnés au par. 37(3) de la *Loi sur les conflits d'intérêts des députés et des membres du Conseil exécutif* sont énoncés au par. 4(1) relatif à la citation à comparaître et à l'ordre de produire des documents, au par. 4(2) relatif à la comparution et à la production de documents et à l'art. 8 relatif à la preuve pertinente qui est recevable même si elle n'est pas admissible lors d'un procès.

4(1) Chacun des commissaires peut, par citation établie selon la formule prescrite, requérir la comparution devant eux de toute personne dont le témoignage peut se rapporter directement au sujet de l'enquête, et ordonner à toute personne de produire les livres, papiers et documents qu'il juge nécessaires.

4(2) Ces personnes doivent comparaître et répondre à toutes les questions qui leur sont posées par un commissaire sur les sujets qui font ou qui feront l'objet de l'enquête, et produire devant les commissaires les livres, papiers et documents qui leur sont demandés et dont ils ont la garde ou le contrôle.

[...]

8 Les commissaires peuvent entendre et recevoir toute preuve pertinente, même si elle n'est pas admissible suivant les règles applicables aux procès devant la Cour du Banc de la Reine du Nouveau-Brunswick.

LA COUR SUPRÊME

Je souscris à l'argumentation de Gary Faloon, c.r., avocat de la commission d'enquête, qui a fait les observations suivantes :

[TRADUCTION]

Les limites du privilège du pouvoir exécutif

La Province fait valoir que d'un point de vue historique, la tradition démocratique canadienne consacre la confidentialité des conversations tenues lors de réunions du Conseil exécutif et celle des documents préparés à l'intention du Conseil exécutif. On prétend souvent que la raison-d'être de cette immunité générale est de protéger les conversations privées des membres du Cabinet et de garantir que la politique

gouvernementale pourra être conçue et débattue ouvertement et en toute franchise derrière des portes closes.

Au cours des trente dernières années, toutefois, les tribunaux canadiens ont adopté une position selon laquelle le principe général devrait être un principe d'ouverture menant à la divulgation et non un principe d'immunité. Cela a commencé avec les arrêts *Smallwood c. Sparling*, [1982] 2 R.C.S. 686 et *Carey c. Ontario*, [1986] 2 R.C.S. 637, deux arrêts de la Cour suprême dans laquelle l'immunité de l'État n'a pas été maintenue. Le juge La Forest, qui rendait la décision de la Cour dans l'arrêt *Carey*, a dit ce qui suit au par. 46 :

Je suis prêt à reconnaître un certain poids à l'argument relatif à la franchise, mais il est bien facile d'en exagérer l'importance. Nous savons tous, au fond, qu'il vaut mieux traiter certaines affaires en privé, mais, en général, je doute que la faible possibilité qu'une communication quelconque puisse avoir à être produite aux fins d'un procès ait un effet appréciable sur la franchise de communications confidentielles. Indubitablement, cette notion a été mise à rude épreuve par les tribunaux.

Le juge La Forest a également statué qu'il y a des limites au privilège du pouvoir exécutif. Aux paragraphes 53 et 54, se reportant à l'arrêt *U.S. c. Nixon*, 94 S.Ct. 3090 (1974), il a dit ceci :

La cour a reconnu la nécessité de protéger les communications entre personnes occupant des charges importantes dans le gouvernement. Elle a accordé un certain poids à l'argument relatif à la franchise, mais elle a aussi souligné l'importance de protéger le Président contre tout harcèlement par des *subpoenas* vexatoires et inutiles.

D'un autre côté, la nécessité d'assurer la confidentialité au sein du gouvernement, selon la cour, doit être soupesée par rapport à la reconnaissance historique de la suprématie du droit. L'intégrité du système judiciaire et la confiance du public en celui-ci dépendaient de la divulgation intégrale de tous les faits dans les limites prescrites par les règles de la preuve, particulièrement en matière pénale.

Il a ordonné que les documents du Cabinet soient mis à la disposition de la Cour pour qu'elle puisse les examiner et a tiré la conclusion suivante, au par. 85 :

La divulgation est d'autant plus importante de nos jours que le public revendique un gouvernement plus ouvert. La divulgation sert à renforcer la confiance du citoyen en ses institutions gouvernementales. Cela est lourd de conséquences pour l'administration de la justice qui constitue une préoccupation majeure pour les tribunaux.

Voir aussi l'ouvrage de Alan W. Bryant, Sidney N. Lederman et Michelle K. Fuerst, *Sopinka, Lederman & Bryant : The Law of Evidence in Canada*, 3^e éd. (Markham : LexisNexis, 2009), à la page 910 :

[TRADUCTION]

Outre le fait qu'il traduise le souci de protéger les communications confidentielles dans le cadre de certaines relations sociales importantes, le privilège peut être invoqué pour protéger la société dans son ensemble lorsque la divulgation est susceptible de compromettre la sécurité nationale du pays ou de nuire à la prompt administration de l'État [...] Ces catégories de privilège sont fondées sur différents ensembles de valeurs externes qui méritent d'être protégées même si cela peut avoir pour effet d'entraver l'efficacité du procès. Par conséquent, il existe toujours une certaine tension lorsque la doctrine du privilège est invoquée parce qu'elle a pour conséquence de faire obstacle au processus de recherche de la vérité. Cela étant le résultat naturel, les tribunaux ne se sont pas montrés très empressés à multiplier les domaines de privilège. Le juge en chef Warren Burger a ainsi formulé la chose dans un arrêt américain célèbre [*Nixon*, précité] :

[TRADUCTION]

Quelles que soient leurs origines, ces exceptions à l'obligation qui est faite à chacun de rendre témoignage ne sont pas créées à la légère, ni interprétées d'une façon libérale, parce qu'elles dérogent à la recherche de la vérité.

Dans l'affaire *Smallwood*, précitée, M. Smallwood, ex-premier ministre de la province de Terre-Neuve, avait prétendu bénéficier d'une immunité absolue contre l'obligation de témoigner dans le cadre d'une enquête publique fédérale. Il avait revendiqué l'immunité contre l'obligation de rendre un témoignage oral et de produire des documents parce qu'il était Premier ministre, ministre de l'État et membre du Conseil exécutif. La

juge Wilson, qui rendait la décision de la Cour, a statué que M. Smallwood était un témoin contraignable, mais ce qui est plus important encore, que la règle de droit qui s'applique aux documents est la règle de l'immunité *relative*. Au moment d'appliquer cette règle, il faut soupeser d'une part l'intérêt qu'il y a à divulguer dans une instance précise et d'autre part l'intérêt du public à la non-divulgaration et si le premier l'emporte sur le second, la divulgation doit avoir lieu.

Toute investigation ou enquête sur le bien-fondé de la conduite de représentants du gouvernement a une importance vitale pour le maintien de la tradition démocratique au Canada et il faut accorder une grande importance aux demandes de renseignements faites à cette fin. Voici ce qu'a dit le juge Mosley au par. 182 de la décision *Canada (Procureur général) c. Almalki*, 2010 CF 1106 :

L'intérêt qu'a le public à obliger le gouvernement à répondre des présumés actes ou omissions de ses préposés constitue un facteur important en l'espèce. Le juge La Forest déclare ce qui suit dans l'arrêt *Carey*, précité, à la page 673 :

Il y a un autre facteur qui milite en faveur de la divulgation des documents en l'espèce. L'appelant allègue une conduite peu scrupuleuse de la part du gouvernement. À mon sens, il importe que ce point soit débattu non seulement dans l'intérêt de l'administration de la justice mais aussi dans l'intérêt du bon fonctionnement du pouvoir exécutif du gouvernement, ce qui a été avancé comme but de la demande de non-divulgaration des documents.

L'arrêt *Carey*, précité, énonce les principes juridiques maintenant établis au Canada. Dans la décision *Nova Scotia (Attorney General) c. Royal & Sun Alliance Insurance Co. of Canada*, (2000) 189 N.S.R. (2d) 290 (C.S.N.-É.), le juge Wright a dit de cet arrêt, au par. 14, qu'il était [TRADUCTION] « [l']arrêt qui fait autorité sur le droit régissant le privilège du Cabinet (maintenant appelé, de façon plus exacte, l'immunité ou l'exception d'intérêt public) dans notre pays ».

Voir aussi la décision *Fullowka c. Royal Oak Mines Inc.*, 1999 CarswellNWT 23 (C.S.T.-N.-O.), dans laquelle le juge Vertes a cité l'article du professeur P.W. Hogg, intitulé «Government Liability: Assimilating Crown and Subject», publié dans le volume (1994) 16 *Advocates' Quarterly* 366 :

[TRADUCTION]

La question qui se pose depuis longtemps à cet égard est la mesure dans laquelle les tribunaux peuvent examiner la prétention d'un ministre voulant qu'un document soit privilégié pour le motif que sa divulgation porterait atteinte à l'intérêt public. Cette question s'est subdivisée en différentes questions subsidiaires. Le certificat du ministre était-il concluant ? Les documents étaient-ils soustraits à tout examen judiciaire ? La nécessité de préserver la franchise au sein de la Fonction publique était-elle un motif d'intérêt public suffisant ? Les documents du Cabinet appartenaient-ils à une catégorie bénéficiant d'une protection particulière ? Depuis la Deuxième Guerre mondiale, les tribunaux du Commonwealth se sont graduellement attaqués à toutes ces questions -- et les résultats étaient prévisibles étant donné la tendance dont j'ai fait état. Au Canada, la dernière étape a été franchie dans l'arrêt *Carey c. Ontario*, dans lequel la Cour a répondu par la négative à toutes les questions susmentionnées. La Cour suprême du Canada a refusé d'accepter un certificat attestant un privilège de l'État relativement à des documents du Cabinet, a refusé de souscrire au fait que la franchise au sein de la Fonction publique était un motif d'intérêt public particulièrement important et a renvoyé la revendication de privilège au tribunal de première instance afin qu'il examine les documents en privé et décide s'ils devaient ou non être produits.

[C'est moi qui souligne.]

J'ajouterais aux observations que l'avocat a faites devant la commission d'enquête l'arrêt *Babcock c. Canada (Procureur général)*, 2002 CSC 57, [2002] 3 R.C.S. 3 dans lequel la Cour a cité de longs extraits de la décision du juge La Forest dans l'affaire *Carey*. La juge en chef McLachlin a fait observer que la confidentialité des renseignements du Cabinet devait se mesurer à l'intérêt public dans la divulgation de ces renseignements. Cela commande ensuite la pondération des deux facteurs. Elle en a donné comme exemple qu'il devait exister une façon de déterminer si les renseignements dont on invoque la confidentialité sont réellement liés aux délibérations du Cabinet. Il s'en est suivi que plusieurs ressorts ont adopté des dispositions législatives qui protègent la confidentialité des renseignements du Cabinet.

Au Nouveau-Brunswick, cela a été fait relativement à plusieurs lois, par exemple : la *Loi sur l'Ombudsman*, la *Loi sur l'accès et la protection en matière de renseignements personnels sur la santé*, la *Loi sur le droit à l'information et la protection de la vie privée* et la *Loi sur les divulgations faites dans l'intérêt public*. Aucune restriction de ce genre n'a été apportée en ce qui concerne la *Loi sur les conflits d'intérêts des députés et des membres du Conseil exécutif*.

Logiquement, l'adoption de dispositions législatives restrictives viendrait contrecarrer l'objet de la *Loi sur les conflits d'intérêts des députés et des membres du Conseil exécutif*. La *Loi* concerne avant tout l'intégrité des membres. On se trouverait à compromettre l'application des principes d'intégrité qui sont si clairement énoncés dans la *Loi sur les conflits d'intérêts des députés et des membres du Conseil exécutif* en faisant obstacle à une enquête sur une conduite que l'Assemblée législative elle-même entend interdire. La *Loi* elle-même est un code de conduite; l'intérêt public doit l'emporter.

LA CONVENTION NOUVEAU GOVERNMENT-ANCIEN GOUVERNEMENT

La coutume non écrite, qui est appelée une « convention », veut que lorsqu'il y a un changement de gouvernement, la nouvelle Administration n'ait pas accès aux dossiers du Cabinet de l'ancienne Administration.

Le sous-ministre d'Entreprises Nouveau-Brunswick a refusé de divulguer les mémoires au Conseil exécutif. Son avocat, qui appartient au Cabinet du procureur général, a dit ce qui suit dans un mémoire adressé à la commission d'enquête :

[TRADUCTION] La divulgation au Commissaire des mémoires au Conseil exécutif serait contraire aux conventions de la démocratie parlementaire selon lesquelles un nouveau gouvernement ne saurait avoir accès aux dossiers du Cabinet d'un gouvernement précédent. En autorisant l'accès aux documents du Cabinet pour le motif qu'un membre du

nouveau gouvernement a déposé une plainte en vertu de la *Loi sur les conflits d'intérêts des députés et des membres du Conseil exécutif*, on se trouverait à permettre au nouveau gouvernement d'avoir accès à des documents auxquels il n'a pas droit. Cela nuirait à l'intérêt public parce que cela modifierait les principes bien établis régissant la confidentialité des renseignements d'un Cabinet antérieur et permettrait au nouveau gouvernement d'obtenir indirectement des renseignements qu'il ne lui est pas permis d'obtenir directement.

Je ne vois absolument pas sur quelle logique convaincante repose cet argument. En vertu de la *Loi sur les conflits d'intérêts des députés et des membres du Conseil exécutif*, je suis un fonctionnaire assermenté de l'Assemblée législative et ma nomination a fait l'objet d'un choix et d'un consentement unanimes. Tout ce qui passe par mon bureau est confidentiel. L'enquête est terminée et elle demeure confidentielle jusqu'à ce que mon rapport ait été déposé devant l'Assemblée législative, après quoi tous les documents seront détruits.

Je ne saisi pas très bien l'argument selon lequel le nouveau gouvernement obtiendrait, on ne sait trop comment, des renseignements sensibles ressortissant aux politiques de l'ancien gouvernement si j'examinais les documents, ou si on en faisait un usage quelconque, traitant des demandes d'aide financière du groupe de compagnies Atcon qui ont un rapport avec la demande d'investigation faite en vertu de l'art. 4 de la *Loi*. L'aide financière a été autorisée. La question qui se pose est celle de savoir si Shawn Graham a participé à la prise de décision pendant qu'il remplissait ses fonctions alors qu'il devait raisonnablement savoir que cela pouvait servir les intérêts privés de son père qui était un des administrateurs et experts-conseils de Vanerply AB.

En ma qualité de Commissaire chargé de l'enquête, je ne suis pas le mandataire du gouvernement de l'heure. Je rends compte de mon travail à l'Assemblée législative. Je suis uniquement préoccupé par les faits qui me permettront d'établir s'il y a eu contravention à la *Loi*.

Je souscris à l'argumentation de l'avocat de la commission d'enquête en ce qui concerne la « convention » :

[TRADUCTION]

La Convention relative à la confidentialité des renseignements d'un Cabinet précédent

Le juge Iacobucci a examiné la nature et les origines des conventions constitutionnelles dans l'arrêt *Ontario English Catholic Teachers' Assn. c. Ontario (Procureur général)*, [2001] 1 R.C.S. 470 (C.S.C.). Il a rendu la décision unanime de la Cour et a dit ceci, au par. 65 :

[...] Les conventions constitutionnelles portent sur les principes du gouvernement responsable et non sur la façon dont est exercé un pouvoir particulier qui relève clairement de la province. Notre Cour a examiné la nature des conventions constitutionnelles dans le *Renvoi relatif au rapatriement*, précité, p. 878 et 880 :

C'est apparemment Dicey qui, dans la première édition de son ouvrage *Law of the Constitution*, en 1885, les a baptisées «conventions constitutionnelles», une expression qui est rapidement devenue consacrée (voir W. S. Holdsworth, «The Conventions of the Eighteenth Century Constitution» (1932), 17 Iowa Law Rev. 161). Sous ces termes, Dicey décrit les principes et règles du gouvernement responsable, dont plusieurs ont été cités ci-dessus et qui régissent les relations entre la Couronne, le premier ministre, le cabinet et les deux chambres du Parlement. Ces règles ont été élaborées en Grande-Bretagne au moyen de la coutume et du précédent au cours du dix-neuvième siècle et ont été exportées dans les colonies britanniques qui obtenaient leur autonomie.

On ne peut recourir à une convention constitutionnelle pour annuler ou écarter un texte législatif clair et précis. Il existe des précédents tout à fait clairs de la Cour suprême en ce sens; quels que soient les autres usages qu'on puisse en faire, on ne peut utiliser les conventions constitutionnelles pour invalider des règles de droit expresses et précises. Voir l'arrêt

Renvoi : Résolution pour modifier la Constitution, [1981] 1 R.C.S. 753 (C.S.C.), aux p. 880 et 881 :

Peut-être la raison principale pour laquelle les règles conventionnelles ne peuvent être appliquées par les tribunaux est qu'elles entrent généralement en conflit avec les règles juridiques qu'elles postulent. Or les tribunaux sont tenus d'appliquer les règles juridiques. Il ne s'agit pas d'un conflit d'un genre qui entraînerait la perpétration d'illégalités. Il résulte du fait que les règles juridiques créent des facultés, pouvoirs discrétionnaires et droits étendus dont les conventions prescrivent qu'ils doivent être exercés seulement d'une façon limitée, si tant est qu'ils puissent l'être.

La Cour suprême du Canada a ultérieurement confirmé le droit en vigueur à cet égard dans l'arrêt *Renvoi relatif à la sécession du Québec*, [1998] 2 R.C.S. 217, au par. 98 :

Les rôles respectifs des tribunaux et des acteurs politiques, dans l'exécution des obligations constitutionnelles que nous avons décrites, découlent inéluctablement des remarques antérieures. Dans le *Renvoi relatif au rapatriement*, une distinction a été faite entre le droit de la Constitution, que généralement les tribunaux font respecter, et d'autres règles constitutionnelles, telles les conventions de la Constitution, qui sont susceptibles de sanctions politiques seulement.

[C'est moi qui souligne.]

La convention sur le caractère confidentiel des documents du Cabinet qu'invoque le sous-ministre pour refuser de produire les mémoires au Conseil exécutif ne s'applique qu'à la divulgation à un nouveau gouvernement des renseignements confidentiels d'un gouvernement précédent. En l'espèce, ce n'est pas une nouvelle Administration mais le Commissaire qui veut examiner ces documents conformément aux pouvoirs et privilèges explicites qui lui sont conférés par la *Loi* et par la *Loi sur les enquêtes*. De plus, toute divulgation est régie par les dispositions concernant la confidentialité qui sont énoncées aux art. 33 et 40 de la *Loi*.

Qui plus est, il n'a pas été établi que les tribunaux canadiens ont reconnu l'existence d'une convention de cette nature. Comme nous l'avons vu,

même si elle était reconnue, elle n'a pas force de loi. Ce qui est plus important encore, toutefois, étant donné la nature des fonctions du Commissaire, c'est qu'en lui refusant l'accès aux mémoires au Conseil exécutif, on se trouverait à contrecarrer l'objet même de la *Loi*. Les propos du juge Hugessen, au par. 73 de l'arrêt *Canada (Vérificateur général) c. Canada (Ministre de l'Énergie, des Mines et des Ressources)*, [1987] 1 C.F. 406 (C.A.), sont particulièrement pertinents pour les fins de cette discussion :

La convention sur le caractère confidentiel des documents du Cabinet, laquelle interdit aux membres d'un gouvernement de prendre connaissance des secrets d'un gouvernement précédent d'un parti politique différent (et à plus forte raison de les divulguer), constitue une autre question. Le juge de première instance a conclu à l'existence d'une telle convention. Je ne suis pas tout à fait sûr qu'il ait eu raison [...]. Mais je ne crois pas nécessaire d'exprimer une opinion définitive sur la question. La convention, si elle existe, n'est rien de plus que cela. Une convention, par définition, doit céder le pas devant un texte de loi formel.

[C'est moi qui souligne.]

Il a ensuite ajouté ceci :

[...] En effet, d'après la nature même de ses fonctions, le vérificateur général enquête sur des événements passés, parfois déjà vieux de plusieurs années. Il est tout simplement impensable qu'un changement de gouvernement puisse faire échouer ses recherches.

[C'est moi qui souligne.]

LA COMPÉTENCE DU COMMISSAIRE

Bien que l'article 4 de la *Loi sur les enquêtes* confère au commissaire le pouvoir de citer des témoins et d'ordonner la production de documents, l'avocat du sous-ministre d'Entreprises Nouveau-Brunswick, qui représente le procureur général, prétend qu'il ne s'applique pas aux documents du Conseil exécutif en raison de l'art. 32 de la *Loi d'interprétation* :

32 Aucune loi ni aucun règlement ne porte atteinte aux droits de la Couronne ni n'a d'effets défavorables sur ceux-ci sauf s'il est expressément stipulé que la Couronne est liée par cette loi ou ce règlement.

En réponse à la position qu'a adoptée l'avocat du sous-ministre, je souscris à l'argumentation suivante qu'a mise de l'avant M^e Faloon, avocat de la commission d'enquête :

[TRADUCTION]

Le sous-ministre a prétendu que le Commissaire n'a pas compétence pour ordonner la production des mémoires aux Conseil exécutif pour le motif qu'il n'y a dans la *Loi* aucune disposition qui précise que l'État est lié par celle-ci. Le sous-ministre s'appuie sur l'art. 32 de la *Loi d'interprétation* L.R.N.-B. 1973, ch. I-13 (ci-après la *Loi d'interprétation*), qui est ainsi rédigé :

32 Aucune loi ni aucun règlement ne porte atteinte aux droits de la Couronne ni n'a d'effets défavorables sur ceux-ci sauf s'il est expressément stipulé que la Couronne est liée par cette loi ou ce règlement.

Le sous-ministre prétend que si l'accès aux documents du Conseil exécutif n'est pas expressément interdit dans la *Loi*, c'est parce que cela est inutile : contrairement aux lois mentionnées dans la section précédente, la *Loi* n'a pas force obligatoire à l'endroit de l'État et une disposition de cette nature serait superflue.

Il est à remarquer qu'il y a plusieurs douzaines de lois du Nouveau-Brunswick qui comprennent une disposition où il est expressément dit que « [l]a présente loi lie la Couronne ». (Voir la *Loi sur la prescription*, L.N.-B. 2009, ch. L-8.5, la *Loi sur les espèces menacées d'extinction*, L.N.-B. 1996, ch. E-9.101, et la *Loi sur la santé publique*, L.N.-B. 1998, ch. P-22.4, entre autres).

Il n'y a aucune précision de ce genre dans les dispositions de la *Loi sur l'Ombudsman*, de la *Loi sur l'accès et la protection en matière de renseignements personnels sur la santé*, L.N.-B. 2009, c. P-7.05, de la *Loi sur le droit à l'information et la protection de la vie privée*, L.N.-B. 2009, ch. R-10.6 ou de la *Loi sur les divulgations faites dans l'intérêt public*, L.N.-B. 2007, ch. P-23.005. Suivant une interprétation stricte de l'art. 32 de la *Loi d'interprétation*, ces lois ne lient pas l'État et l'argument du sous-ministre doit être rejeté.

À titre subsidiaire, si l'on détermine que l'art. 32 de la *Loi d'interprétation* devrait recevoir une interprétation plus libérale, nous faisons valoir que la *Loi* lie l'État pour le motif qu'une intention manifeste de lier l'État se dégage du texte même de la *Loi* et parce que son objet serait entièrement contrecarré si l'État n'était pas lié par celle-ci.

Jusqu'à une époque relativement récente, on aurait pu prétendre, en s'appuyant sur un courant jurisprudentiel clair, qu'une stipulation explicite indiquant que l'État était lié était nécessaire pour écarter la présomption d'immunité. Cette discussion a notamment comme point de départ l'art. 17 de la *Loi d'interprétation* fédérale, L.R.C. 1985, ch. I-21, qui est ainsi rédigé :

17. Sauf indication contraire y figurant, nul texte ne lie Sa Majesté ni n'a d'effet sur ses droits et prérogatives.

Cette disposition de la *Loi d'interprétation* fédérale a été modifiée en 1967, lorsque la nécessité d'une « stipulation expresse » ou d'une « stipulation formelle », comme celle que l'on trouve dans la *Loi d'interprétation* du Nouveau-Brunswick, a été changée pour devenir une « indication ». Dans l'affaire *Sa Majesté du chef de la province de l'Alberta c. Commission canadienne des transports*, [1978] 1 R.C.S. 61 (C.S.C.) (ci-après l'affaire « *PWA* »), la Cour d'appel fédérale avait conclu

que la modification apportée au libellé était importante. Elle avait statué que le nouveau libellé avait une portée suffisamment large pour permettre le retour de l'exception fondée sur la « déduction nécessaire » qui existait en common law. À la Cour suprême du Canada, le juge en chef Laskin, qui s'exprimait au nom des juges majoritaires sur ce point, en est arrivé à une conclusion différente. Voici ce qu'il a dit, aux p. 267 et 268 :

[...] Je ne puis souscrire à la conclusion de la Cour d'appel fédérale selon laquelle la substitution de l'expression «sauf dans la mesure y mentionnée ou prévue» pour «à moins que l'intention n'y soit formellement exprimée d'y atteindre Sa Majesté» rétablit la doctrine de la «déduction nécessaire». Il me semble au contraire que la «déduction nécessaire» est exclue s'il faut que la Couronne soit mentionnée ou prévue dans le texte législatif pour y être assujettie.

Six ans plus tard, dans l'arrêt *R. c. Eldorado Nucléaire Ltée*, [1983] 2 R.C.S. 551 (C.S.C.), le juge Dickson a dit ce qui suit, à la p. 558 :

Le Parlement a suivi l'exemple de la *common law* et est allé encore plus loin. L'article 16 [l'actuel article 17] de la *Loi d'interprétation* supprime même l'exception de la déduction nécessaire[.]

Ces décisions étayaient d'une façon irrésistible l'argument voulant que contrairement à la position adoptée en common law, l'État devait être irréfutablement considéré comme non lié par une loi en l'absence d'une stipulation explicite contraire dans cette loi. Dans les années qui ont suivi, toutefois, un deuxième courant jurisprudentiel est venu supplanter cet argument et a resserré considérablement les limites de la présomption d'immunité.

Ce deuxième courant jurisprudentiel a pris naissance avec l'arrêt *R. c. Ouellette*, [1980] 1 R.C.S. 568 (C.S.C.). Le juge Beetz, qui a rendu la décision de la Cour, a souligné que dans sa forme modifiée, l'art. 16 de la *Loi d'interprétation* ne comportait plus comme autrefois, avant 1967, le mot « expressément » et a dit ce qui suit :

Cet article n'exclut pas la règle selon laquelle les diverses dispositions d'une loi s'interprètent les unes à la lumière des autres, et il est possible que Sa Majesté soit implicitement liée par un texte législatif si telle est l'interprétation que ce texte doit recevoir lorsqu'il est replacé dans son contexte. Or, à mon avis, telle est l'interprétation que doivent recevoir les art. 758 et 771(3) du *Code criminel* lorsqu'ils sont lus non pas isolément mais dans le cadre de la Partie XXIV relative aux déclarations sommaires de culpabilité.

Selon toute apparence, le raisonnement suivi dans l'arrêt *Ouellette*, précité, contredisait ce qui avait été dit dans les arrêts *PWA* et *Eldorado*, précités. Ce conflit n'est pas passé inaperçu lorsque la Cour suprême est revenue sur la question de l'immunité de l'État dans l'arrêt *Alberta Government Telephones c. (Canada) Conseil de la radiodiffusion et des télécommunications canadiennes*, [1989] 2 R.C.S. 225. Le juge en chef Dickson a rendu le jugement de la majorité. À la page 276, il a exposé la question que soulevait le libellé de ce qui est maintenant l'art. 17 de la *Loi d'interprétation fédérale* :

Comme je l'ai déjà souligné, l'art. 16 de la *Loi d'interprétation* a été modifié en 1967-68. Selon la version antérieure, il fallait qu'il «soit formellement stipulé» que la Couronne serait liée. Selon la nouvelle version, la Couronne ne sera pas liée par la loi «sauf dans la mesure y mentionnée ou prévue». La question porte ici sur le caractère explicite que le nouveau texte de l'art. 16 exige pour lier la Couronne.

Après avoir souligné que la common law reconnaissait une exception à la nécessité d'une stipulation formelle lorsque l'intention de lier l'État (la Couronne) se dégageait par déduction nécessaire du libellé d'une loi, le juge en chef a passé en revue ce que la Cour suprême avait antérieurement dit en ce qui concerne la question de savoir si cette exception avait survécu à la codification de la présomption. Il a ensuite dit ceci, aux pages 280 et 281 :

L'article 16 exige que le Parlement exprime clairement son intention de lier Sa Majesté. Ce qui ne veut pas nécessairement dire qu'une loi fédérale doit comporter un article qui prévoit «La présente loi lie Sa Majesté» (bien qu'en matière de rédaction législative une telle disposition ne laisserait plus place à aucun doute).

[...]

À mon avis, compte tenu des affaires *PWA* et *Eldorado*, la portée des termes «mentionnée ou prévue» doit s'interpréter indépendamment de la règle de *common law* supplantée. [...] Il me semble que les termes «mentionnée ou prévue» contenus à l'art. 16 peuvent comprendre: (1) des termes qui lient expressément la Couronne («Sa Majesté est liée»); (2) une intention claire de lier qui, selon les termes de l'arrêt *Bombay*, «ressort du texte même de la loi», en d'autres termes, une intention qui ressort lorsque les dispositions sont interprétées dans le contexte d'autres dispositions, comme dans l'arrêt *Ouellette*, précité, et (3) une intention de lier lorsque l'objet de la loi serait «privé [...] de toute efficacité» si l'État n'était pas lié ou, en d'autres termes, s'il donnait lieu à une absurdité (par opposition à un simple résultat non souhaité). Ces trois éléments devraient servir de guide lorsqu'une loi comporte clairement une intention de lier la Couronne.

Cette opinion a trouvé plus ample confirmation dans la décision de la Cour suprême dans l'affaire *Friends of the Oldman River Society c. Canada (Ministre des Transports)*, [1992] 1 R.C.S. 3. La question en litige était celle de savoir si l'Alberta (l'État) était lié par la *Loi sur la protection des eaux navigables*, une loi fédérale. À la page 50, le juge La Forest, qui s'exprimait au nom de la majorité, a dit ce qui suit:

Toutes les parties intéressées reconnaissent que la *Loi sur la protection des eaux navigables* ne prévoit pas expressément qu'elle lie la Couronne; il reste donc à déterminer si la Couronne est liée par déduction nécessaire.

[C'est moi qui souligne.]

Après avoir cité les propos du juge en chef Dickson dans l'arrêt *Alberta Government Telephones*, précité, concernant la portée de l'art. 17, et avoir souligné que cette décision avait dissipé toute incertitude quant à la situation du droit à cet égard, le juge La Forest a tiré la conclusion suivante :

À mon avis, ce passage fait clairement ressortir qu'une analyse du contexte d'une loi peut révéler une intention de lier la Couronne si cette conclusion s'impose immanquablement par déduction logique.

Chose importante, il a ensuite décrit d'une manière très large le contexte dans lequel cette analyse devait être effectuée. Il ne fallait pas interpréter

le contexte d'une façon trop restreinte, mais celui-ci devait plutôt englober « les circonstances qui ont donné lieu à l'adoption de la loi et la situation qu'elle voulait corriger ».

Pour les fins de la présente discussion, deux éléments importants se dégagent des arrêts se rapportant à l'art. 17 de la *Loi d'interprétation* fédérale. Premièrement, la Cour suprême du Canada a rejeté la proposition voulant que les exceptions à la présomption d'immunité de l'État qui étaient reconnues en common law aient survécu à la codification. Deuxièmement, le rejet de cette proposition n'a pas entraîné un accroissement de l'étendue de l'immunité de l'État parce que la Cour suprême a considéré que le libellé de l'art. 17 incluait les exceptions reconnues en common law. Nous examinerons maintenant la pertinence de ces changements en ce qui concerne l'interprétation de l'art. 32 de la *Loi d'interprétation* du Nouveau-Brunswick.

Dans la décision *LeBlanc c. Mullins* (1984), 54 R.N.-B. (2^e) 57 (C.B.R.), conf. (1984), 54 R.N.-B. (2^e) 329 (C.A.), le juge Meldrum a statué que l'art. 32 de la *Loi d'interprétation* ne devait pas être interprété d'une façon littérale et il a dit ceci, au par. 14 :

Dans l'affaire *Bombay Province c. Bombay Municipal Corporation*, [1947] A.C. 58, le lord du Parcq a déclaré en énonçant le principe, à la page 61:

[TRADUCTION]

Le principe général à appliquer en examinant la question de savoir si la Couronne est liée par les dispositions générales d'une loi est bien connu. Selon l'ancienne maxime juridique, aucune loi ne lie la Couronne si celle-ci n'y est expressément mentionnée... Mais cette règle souffre au moins une exception. La Couronne, comme on l'a souvent dit, peut être liée par la voie d'une 'implication nécessaire' [déduction nécessaire]. En d'autres termes, s'il est manifeste, d'après le texte même de la loi, que le législateur entendait lier la Couronne, le résultat est le même que si la Couronne était expressément nommée.

Et, à la page 63:

[TRADUCTION]

S'il peut être affirmé qu'au moment où la loi a été adoptée et a reçu sanction royale, il ressortait clairement de son libellé qu'elle serait privée de tout effet statutaire si elle ne liait pas la Couronne, on peut alors en inférer que la Couronne a accepté d'être liée. Leurs Seigneuries ajouteront que lorsque la Cour est priée de faire cette inférence, il faut toujours se souvenir que, si le législateur avait eu l'intention de lier la Couronne, il aurait facilement pu le dire avec des termes simples.

On peut également se tourner vers la jurisprudence ontarienne plus récente. Les parties pertinentes de l'art. 11 de la *Loi d'interprétation* de l'Ontario, L.R.O. 1990, ch. I.11 ont, pour l'essentiel, le même libellé que l'art. 32 de la *Loi d'interprétation* du Nouveau-Brunswick :

La Couronne

11. Aucune loi ne porte atteinte aux droits de Sa Majesté, de ses héritiers ou de ses successeurs, sauf indication explicite que Sa Majesté est liée par la loi.

Dans la décision *R c. Greening*, 1992 CarswellOnt 57, le juge MacDonnell a reconnu les difficultés auxquelles on se trouvait confronté si l'on essayait de simplement importer en Ontario, dans toute leur étendue, les exceptions à la présomption d'immunité de l'État qui ont été apportées par la Cour suprême du Canada relativement à l'art. 17 de la *Loi d'interprétation* fédérale. Après avoir examiné les modifications apportées au libellé de la loi fédérale et fait état de l'évolution de la jurisprudence à cet égard, il a dit ceci, au par. 77 :

[TRADUCTION]

La question à laquelle nous devons répondre, donc, est celle de savoir si l'exception prévue à l'art. 11 est suffisamment large pour englober des expressions d'une intention législative autres qu'une stipulation précise contenue dans un texte législatif. J'estime que oui. Comme je l'ai souligné, il existe des similitudes entre les dispositions fédérales et ontariennes. Le fondement de l'exception à la présomption d'immunité est le même : la présomption sera écartée en présence d'une intention contraire du législateur. On pourrait considérer que les deux textes excluent une intention contraire implicite, mais cette interprétation a été

rejetée pour ce qui concerne la disposition fédérale. Dans l'arrêt *Alberta Government Telephones*, précité, le juge en chef Dickson a reconnu, à la p. 280, que « [l']article [17] exige que le Parlement exprime clairement son intention de lier Sa Majesté », mais a ensuite ajouté qu'il « ne doit pas s'interpréter comme une extension excessive de l'immunité de l'État, compte tenu particulièrement du par. 3(1) de la *Loi d'interprétation* [fédérale] » [p. 281]. La mention du paragraphe 3(1) n'est pas anodine. Ce paragraphe dispose, en partie, qu'« [à] moins qu'une intention contraire n'apparaisse, chacune des dispositions de la présente loi s'étend et s'applique à tout texte législatif » [c'est le juge MacDonnell qui souligne]. Le juge en chef Dickson a invoqué cette disposition non pas pour écarter l'art. 17, mais plutôt afin qu'elle l'aide à en deviner le sens. Le paragraphe 3(1) traduit l'importance fondamentale que revêt pour notre système constitutionnel le principe de la suprématie législative et ce principe semble avoir fondé la décision du juge en chef Dickson d'interpréter l'art. 17 d'une façon qui était généreuse envers les expressions implicites mais claires de l'intention du législateur. La *Loi d'interprétation* de l'Ontario contient une disposition semblable au par. 3(1) de la loi fédérale. Le paragraphe 1(1) est en partie rédigé ainsi :

Les dispositions de la présente loi s'appliquent à toute loi de la Législature comprise dans les présentes lois refondues ou adoptée par la suite, sauf dans le mesure où [...]

a) elles sont incompatibles avec l'intention ou l'objet de cette loi[.]

Je souligne que la *Loi d'interprétation* du Nouveau-Brunswick contient une disposition semblable :

1(1) La présente loi s'étend et s'applique à tout texte législatif et à tout règlement, sauf dans la mesure où elle

a) est incompatible avec le sens ou l'objet du texte législatif ou du règlement, [...]

Le juge MacDonnell a dit ceci, pour conclure, aux par. 79 et 80 :

[TRADUCTION]

Une stipulation claire et explicite contenue dans un texte législatif portant que l'État est lié par ce texte répond sans aucun doute aux exigences de l'art. 11, mais le libellé de l'art. 11 peut s'appliquer à des expressions d'intention qui sont moins explicites. La teneur du texte législatif, son libellé et son contexte *peuvent* démontrer avec force que l'intention du législateur était que l'État soit lié par le texte législatif.

J'estime donc que le critère est substantiellement le même pour ce qui concerne la loi fédérale et la loi provinciale : la présomption d'immunité de l'État sera écartée en présence de l'expression claire d'une intention contraire du législateur, que cette intention soit

communiquée explicitement ou implicitement. Ce résultat découle d'une interprétation large et libérale du libellé des art. 17 de la loi fédérale et 11 de la loi ontarienne.

Le critère applicable sous le régime de la *Loi d'interprétation* du Nouveau-Brunswick est donc le même que celui qu'a énoncé le juge en chef Dickson dans l'arrêt *Alberta Government Telephones*, précité. Les considérations suivantes s'appliquent :

- (1) Y a-t-il des termes qui lient expressément l'État (par exemple, « Sa Majesté est liée ») ?
- (2) Est-ce que l'objet de la loi serait privé de toute efficacité ou complètement contrecarré si le gouvernement n'était pas lié ?
- (3) Existe-il une intention claire de lier qui ressort du texte même de la loi ?

Dans l'ensemble, la *Loi* a pour objet de garantir que lorsqu'il remplit ses fonctions, aucun député ou membre du Conseil exécutif ne prendra de décision ou ne participera à la prise de décision qui peut servir ses intérêts privés ou ceux d'une autre personne. Il ne fait aucun doute que la grande majorité – sinon la presque totalité – des documents pertinents pour les fins d'une enquête sur un membre du Cabinet sont des documents du Conseil exécutif. Le fait de ne pas mettre ces documents à la disposition du Commissaire non seulement constitue un inconvénient ou un résultat non souhaité mais rendrait toute enquête futile, ce qui contrecarrerait complètement l'objet de la *Loi*. Nous faisons valoir que pour ces seuls motifs, la *Loi* lie l'État.

De plus, certaines dispositions de la *Loi* (l'art. 16 en particulier) imposent des restrictions non seulement aux membres du Conseil exécutif mais

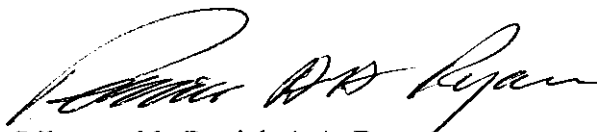
expressément au Conseil exécutif lui-même. Il existe une intention claire de lier l'État qui ressort du texte même de la *Loi*.

LE DROIT D'EXAMINER LES DOCUMENTS

Après avoir examiné les lois applicables et les précédents judiciaires, je conclus que le Commissaire, qui agit en vertu des pouvoirs conférés par la *Loi sur les conflits d'intérêts des députés et des membres du Conseil exécutif* et la *Loi sur les enquêtes* du Nouveau-Brunswick ainsi que des précédents cités relativement aux décisions de la Cour suprême du Canada, est autorisé à contraindre des personnes et des entités à produire pour examen toutes sortes de documents dont elles ont la possession, la garde ou le contrôle et qui se rapportent aux questions dont la commission d'enquête est saisie et à contraindre des témoins à témoigner en ce qui concerne la connaissance qu'ils ont de ces documents. En employant le mot « documents », je n'entends pas en restreindre le sens, je l'emploie afin qu'il désigne aussi la correspondance, le courrier électronique, les mémoires, notes de service et notes, les transcriptions écrites, visuelles et orales, les demandes, les déclarations de toutes sortes, les évaluations, les rapports et tout autre document ayant un rapport quelconque avec l'allégation dont la commission d'enquête est saisie.

Je vous ordonne donc, à vous Bill Levesque et à vous Byron James, à titre de personnes ayant la garde, la charge ou le contrôle des documents en question, en votre qualité de sous-ministres du gouvernement de la Province du Nouveau-Brunswick, et à l'égard desquels vous avez été cités à comparaître devant la présente commission d'enquête, de produire afin que je les examine les nombreux articles énumérés dans vos citations à comparaître respectives et que vous n'avez pas encore remis.

Fait sous mon seing, le 28 janvier 2011.



L'honorable Patrick A.A. Ryan, c.r.,
Commissaire chargé de l'enquête

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI**

IN THE MATTER OF THE RECEIVERSHIP OF:

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.

PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

BETWEEN:

**THE BANK OF NOVA SCOTIA, a Canadian chartered bank
with a registered office in the City of Saint John, Province of
New Brunswick**

APPLICANT

- and -

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

**TWENTY-THIRD REPORT OF THE RECEIVER
(Approval of Proposed Distributions to Secured Creditors and Activities of the Receiver)
July 25, 2012**

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OVERVIEW

1. This report is made by Ernst & Young Inc. (“EYI”) in its capacity as receiver and receiver manager (the “**Receiver**”) of the Atcon Group of Companies (as defined below). The report describes the realizations and anticipated realizations upon the property of the Atcon Group of Companies and an agreement that has been reached amongst the material secured creditors and the Receiver for the distribution of a significant portion of the realizations to those secured creditors. The agreement with the secured creditors took many months to achieve and is subject to the approval of the Court. For the reasons described in this report, the Receiver believes that the proposed distributions accord with the orders made by the Court in this proceeding, accord with the rights of the secured creditors and represents an efficient and fair method of allocating the proceeds of realization in what has been a complex and multi-faceted realization process.
2. This report also provides a summary of the realization and related activities of the Receiver and includes information concerning assets and property that remain subject to realization by the Receiver. As part of this report, some of the activities of EYI as monitor (the “**Monitor**”) in the Atcon CCAA proceeding (the “**CCAA Proceeding**”) are also described.
3. On the applications of The Bank of Nova Scotia (the “**Bank**”) pursuant to section 33 of the *Judicature Act* (New Brunswick), Rule 41 of the Rules of Court of New Brunswick, and section 243 of the *Bankruptcy and Insolvency Act* (Canada) that were heard by The Honourable Mr. Justice Riordon of the Court of Queen’s Bench of New Brunswick on March 1, 2010 and March 30, 2010, EYI was appointed Receiver in respect of the property, assets and undertakings (collectively, the “**Property**”) of:
 - (a) Atcon Group Inc., Atcon Holdings Inc., Atcon Property Holdings Inc., Atcon Veneer Products Inc. and Atcon Logistics Inc. (The Receiver was appointed in respect of these companies by order dated March 2, 2010 (the “**March 2 Order**”)); and

- (b) Atcon Construction Inc., Atcon Management Services Inc., Atcon Civil Ltd., Dycon Construction Ltd., Atcon Structures Inc. and Envirem Technologies Inc. (now known as 058545 N.B. Inc.) (The Receiver was appointed in respect of these companies by order dated March 30, 2010 (the “**March 30 Order**”).

The March 2 Order and the March 30 Order are referred to together as the “**Receivership Orders**”).

4. The Respondents are referred to in this report as the “**Atcon Group of Companies**”. Not all of the affiliates of the Atcon Group of Companies are the subject of the Receivership Orders. Some of them are subsidiaries of companies that are subject to the Receivership Orders. Two of them, Atcon Plywood Inc. and Atcon Industrial Services Inc., are the subject of separate receivership proceedings being administered by PricewaterhouseCoopers Inc.
5. The Receivership Orders authorized the Receiver to, amongst other things, take possession and control of the Property of the Atcon Group of Companies and sell, convey, transfer, lease or assign the Property of the Atcon Group of Companies or any part or parts thereof out of the ordinary course of business without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.
6. The Atcon Group of Companies and certain of their affiliates carried on business as providers of construction, industrial, and environmental services in the Province of New Brunswick, the Province of Newfoundland and Labrador, the Province of Alberta and the Northwest Territories. They had material property in each of those provinces and that territory at the beginning of these receivership proceedings.
7. The property of the Atcon Group of Companies was diverse. It included accounts receivable owed under certain contracts, equipment and inventory located in New Brunswick, Alberta, Northwest Territories and Newfoundland & Labrador, over 55 parcels of real property in New Brunswick, and an operating plywood mill in Sweden.

As a result, significant time and effort was expended by the Receiver to recover the Property of the Atcon Group of Companies for the benefit of its stakeholders.

8. Since March 1, 2010, Property of the Atcon Group of Companies in the aggregate amount of \$40,449,401.38 as of May 18, 2012 has been collected and realized upon during these receivership proceedings and the related CCAA Proceeding.
9. Limited distributions have been approved and made to date. The Receiver made distributions of proceeds of an account receivable owing to Atcon Construction Inc. ("**Atcon Construction**") and originally held in trust by the Receiver pursuant to the Order of Justice Riordon dated June 18, 2010 (referred to therein as the "Builders' Lien Holdback"), along with accrued interest. The distributions were made by the Receiver pursuant to the Order of Justice Riordon dated October 28, 2010 granted in these receivership proceedings and were made to the following creditors:
 - (a) Caterpillar (as defined below), in the amount of \$1,200,000, in connection with builders' liens filed in the Province of Alberta and the Caterpillar Settlement Agreement (as defined below);
 - (b) Emeco (as defined below), in the amounts of \$228,900.22 and \$7,000, in connection with builders' liens filed in the Province of Alberta and its costs, respectively; and
 - (c) the Bank, in the amount of \$2,576,577.04 on account of its valid and enforceable security interest in the accounts receivable of Atcon Construction.
10. The Receiver is of the view that, as a significant portion of the Property of the Respondents has been realized upon, it is appropriate to make a distribution of certain of the realization proceeds to secured creditors that have valid and enforceable security over that Property.
11. The Receiver recognized that, before any further distribution of the realization proceeds could be implemented, it would be necessary to allocate: (a) the costs of these receivership proceedings against the realization proceeds, as this Honourable Court had

granted a first-priority "Administrative Charge" over all of the Property of the Respondents as security for payment of the reasonable fees and disbursements of the Receiver and its counsel pursuant to the Receivership Orders; and (b) the "Replacement Charge" granted over certain Property of Atcon Construction as security for any deficiency faced by a builders' lien claimant or a secured creditor as a result of the establishment of the holdbacks under the June 18, 2010 Order.

12. The Receivership Orders set out a method of allocation of costs for the Administrative Charge that requires a determination of the direct and indirect costs for the realization of Property of the Respondents and an application of such costs to the Property. The Receiver considered and determined that a line-by-line calculation of costs would be time consuming and costly for the receivership estates. The Receiver was of the view that it would be prudent to discuss with the parties with an interest in the Property a potential allocation/cost-sharing mechanism that could be agreed to by the affected parties.
13. As a result, the Receiver completed a review of the claims against the Property of the Respondents and determined that the secured creditors having the primary proprietary interests in the realization proceeds were the Bank, the Province of New Brunswick (the "**Province**"), Caterpillar Financial Services Limited ("**Caterpillar**"), GE Canada Equipment Financing G.P. and its affiliated entities (collectively, "**G.E.**") and Aviva Insurance Company of Canada and its affiliated entities (collectively, "**Aviva**" and the "**Secured Creditors**" respectively). As set out below, the Receiver has obtained legal opinions as to the validity and enforceability of the security of such parties over the applicable Property of the Respondents that resulted in the realization proceeds.
14. The Receiver entered into discussions with the Secured Creditors so that affected creditors could be consulted about a proposed allocation of the priority charges. The discussions were focussed on proposed net amounts to be distributed to each party based on the amount(s) realized for the Property of the Respondents subject to the creditor's security, taking into consideration a proposed allocation of the estate costs of these receivership proceedings to such Property and the maintenance of holdbacks in

connection with the Replacement Charge and the CRA Claims (as defined below), where applicable.

15. The Receiver has reached an agreement with all of the Secured Creditors for the distribution to them of, in aggregate, approximately \$9.1 million, subject to the approval of the Court. The agreement with and amongst the Secured Creditors was achieved after the Receiver provided detailed information to each of the Secured Creditors concerning the realizations, costs and related information and documentation and following numerous discussions and meetings. Each Secured Creditor was rightly concerned to ensure that its rights and interests were respected and that the allocation of proceeds and costs was fair and reasonable from their respective perspectives. Ultimately, each of the Secured Creditors agreed to the following distributions and cost allocations:
 - (a) allocate to receivership costs¹: (i) 15% of the net sale proceeds of real property identified as PID 40095887 and PID 40441917; and (ii) a pro rated recovery of direct expenses allocable to the Envirem Sale Transaction (as defined below) with respect to PID 40450389, all of which property is subject to valid and enforceable security in favour of Caterpillar (the “**Caterpillar Collateral**”);
 - (b) distribute the balance of the net sale proceeds of the Caterpillar Collateral realized to date (being the sum of \$808,629.63) to Caterpillar on account of its security in the Caterpillar Collateral;
 - (c) allocate to receivership costs, 5% of the net sale proceeds of the General Manson Way Property (as defined below), which is subject to valid and enforceable security in favour of G.E. (the “**G.E. Collateral**”);
 - (d) retain out of the net sale proceeds of the G.E. Collateral the sum of \$245,194.31 to be held by the Receiver pending a final determination of the CRA Claims;
 - (e) distribute the balance of the net sale proceeds of the G.E. Collateral (being the sum of \$416,074.87) to G.E. on account of its security in the G.E. Collateral;

¹ When used in this Twenty-Third Report, the term “receivership costs” includes the reasonable fees and disbursements of the Monitor and its counsel related to the CCAA Proceedings.

- (f) allocate to receivership costs: (i) 15% of the net sale proceeds of PID 10208858; and (ii) a pro rated recovery of direct expenses allocable to the Envirem Sale Transaction with respect to PID 70245741, all of which property is subject to valid and enforceable security in favour of Aviva (the “**Aviva Collateral**”);
- (g) retain out of the net sale proceeds of the Aviva Collateral the sum of \$102,583.82 to be held by the Receiver pending a final determination of the CRA Claims;
- (h) distribute the balance of the net sale proceeds of the Aviva Collateral (being the sum of \$174,076.42) to Aviva on account of its security in the Aviva Collateral;
- (i) allocate to receivership costs: (i) a reimbursement of professional fees totalling \$53,600.60 with respect to administrative services provided by the Receiver at the request, and for the sole benefit, of the Province; and (ii) 15% of the net sale proceeds of PID 40179152, PID 40277774, PID 40165656, the Beechwood Property (as defined below) and the Walsh Street Property (as defined below), all of which is subject to valid and enforceable security in favour of the Bank and assigned to the Province (the “**Province Collateral**”);
- (j) retain out of the net sale proceeds of the Province Collateral the sum of \$7,675.30 to be held by the Receiver pending a final determination of the CRA Claims;
- (k) distribute the balance of the net sale proceeds of the Province Collateral (being the sum of \$340,879.90) to the Province on account of its security in the Province Collateral;
- (l) retain on account of future costs and expenses of this proceeding, \$1.0 million of the net sale proceeds of the balance of the Property of the Respondents currently held by the Receiver, which is subject to valid and enforceable security in favour of the Bank;
- (m) retain out of the net sale proceeds of the Bank Collateral the sum of \$4,431,376.16 to be held by the Receiver pending a final determination of the CRA Claims; and

- (n) distribute the sum of \$7,314,321.14 out of the net sale proceeds of the Bank Collateral to the Bank on account of its security in the Bank Collateral (as defined below).

PURPOSE OF THIS REPORT

- 16. As a result, the purpose of this Twenty-Third Report is to:
 - (a) report to this Honourable Court on the realizations of the Property of the Respondents that have occurred to date and the proceeds of such realizations in the possession of the Receiver;
 - (b) seek the approval of this Honourable Court of the distributions to the Secured Creditors that have been agreed to and accepted by the Secured Creditors; and
 - (c) seek the approval of this Honourable Court of the conduct, actions and activities of the Receiver in administering these receivership proceedings to date, including the conduct, actions and activities of the Receiver set out in this Twenty-Third Report and all other reports previously filed by the Receiver in these receivership proceedings to date.

TERMS OF REFERENCE

- 17. In preparing this Twenty-Third Report, the Receiver has been provided with, and has relied upon unaudited historical financial statements, other unaudited financial information and projections prepared by the Respondents, the books and records of the Respondents, discussions with certain of the former management and employees of the Respondents and certain representatives of the Secured Creditors and other information from various sources. The Receiver has assumed that the information it has been provided is accurate and complete.
- 18. All references to monetary amounts in this Twenty-Third Report are in Canadian dollars unless otherwise noted.

19. Capitalized terms not defined in this Twenty-Third Report are as defined in the Receivership Orders.
20. Copies of Court materials in these receivership proceedings and the CCAA Proceeding may be obtained from the Receiver's website established in connection with the Respondents (www.ey.com/ca/atcon).

BACKGROUND

Atcon Group of Companies

21. The Atcon Group of Companies was originally established in 1978 in Miramichi, New Brunswick as a provider of a variety of construction services. At its peak, the Atcon Group of Companies and related affiliates employed more than 2,000 employees internationally, had annual revenues of approximately \$255 million and liabilities in excess of \$250 million.
22. The Atcon Group of Companies expanded its original service offerings and geographic marketplace and it subsequently carried on business through two operating companies, Atcon Construction and Envirem Technologies Inc. (now known as 058545 N.B. Inc.) ("**Envirem**"), primarily in the following areas:
 - (a) Atcon Construction provided a variety of construction and earthworks services, including:
 - (i) heavy civil construction services such as dam, bridge and road construction services, including providing: engineering, design, fabrication and construction services with respect to the construction of several bridges and a road for the transport of overburden from the Athabasca Oil Sands Project in the Province of Alberta; and providing design and construction services with respect to the construction of the Deh Cho Bridge across the Mackenzie River near Fort Providence, Northwest Territories and the Kakisa Bridge across the Kakisa River in the Northwest Territories;

- (ii) earthmoving, trucking, mining and ore extraction services, including the removal of muskeg in the Albian Sands area of the Province of Alberta;
 - (iii) equipment rental and management services with respect to the construction of the plant site works for the Vale Inco Long Harbour Processing Plant in Long Harbour, Newfoundland & Labrador (the "**Vale Inco Project**"); and
 - (b) Envirem manufactured, marketed and exported various organic products and provided land reclamation, soil stabilizing and remediation, seasonal mulching and site restoration services in the Province of New Brunswick.
23. The Atcon Group of Companies had a number of affiliates, which included Atcon Industrial Services Inc. ("**Atcon Industrial**") and Atcon Plywood Inc. ("**Atcon Plywood**"). Atcon Industrial carried on business providing manufacturing, machining and fabrication services to a number of industrial sectors in the Province of New Brunswick and elsewhere. Atcon Plywood carried on business as a manufacturer of plywood in the Province of New Brunswick. The operations of Atcon Industrial and Atcon Plywood were interconnected with the Respondents, as Atcon Industrial and Atcon Plywood conducted business on or adjacent to parcels of real property owned by certain of the Respondents, and Atcon Industrial often completed significant steel and other fabrication work for Atcon Construction on a sub-contract basis.
24. As a result of its diverse business operations, the Respondents had, among other Property, leased and owned Property located on current or former construction job sites, construction storage areas or quarries, and office space located in New Brunswick, Newfoundland & Labrador, Alberta and the Northwest Territories. As well, certain of the Respondents owned commercial office buildings, real property and office furnishings at various locations in Miramichi, Pointe-Verte, Wayerton, Centre Napan, Barnaby, Curventon, and Exmoor, New Brunswick. Additionally, one of the Respondents was the indirect sole owner of an operating plywood mill in Sweden.

Appointment of Receiver and Trustee in Bankruptcy

25. EYI was appointed as Receiver of the Property of the Respondents pursuant to the Receivership Orders. Attached hereto as **Appendix "A"** is a copy of the Receivership Orders.
26. Pursuant to the provisions of the Receivership Orders, the Receiver has been authorized and empowered by this Honourable Court to, amongst other things:
 - (a) take possession and control of the Property of the Respondents;
 - (b) receive, preserve and protect the Property of the Respondents, or any parts thereof;
 - (c) receive and collect all monies and accounts then owed or thereafter owing to the Respondents and to exercise all remedies of the Respondents in collecting such monies;
 - (d) market any or all of the Property of the Respondents, including advertising and soliciting offers in respect of the Property of the Respondents or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
 - (e) sell, convey, transfer, lease or assign the Property of the Respondents or any part or parts thereof out of the ordinary course of business with the approval of this Court in respect of any transaction in which the purchase price exceeds \$100,000 or the aggregate purchase price of all transactions less than \$100,000 exceeds \$1,000,000;
 - (f) apply for any vesting order or other orders necessary to convey the Property of the Respondents or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property; and
 - (g) take any steps reasonably incidental to the exercise of the powers under the Receivership Orders.

27. Pursuant to the Order of Justice Riordon dated April 23, 2010 granted in this proceeding, the Receiver made an assignment in bankruptcy in the name of and on behalf of each of the Respondents. Attached hereto as **Appendix "B"** are copies of the certificates of appointment of EYI as trustee in bankruptcy ("Trustee") in respect of each of the Respondents (collectively, the "**Certificates**").
28. As set out in the Certificates, between April 26 and April 29, 2012, each of the Respondents was assigned into bankruptcy and EYI was appointed as Trustee.

PROPERTY REALIZATIONS

Property of the Respondents Realized to Date

Overview

29. Since its appointment in March 2010, the Receiver has taken steps, pursuant to the provisions of the Receivership Orders and in accordance with its duties as an officer of this Honourable Court, to take possession and control of, and realize upon the recovered Property of the Respondents for the benefit of the Respondents' stakeholders.
30. As noted above and as described in detail below, the Property of the Respondents consisted of a wide variety of Property located across Canada in New Brunswick, Alberta, Newfoundland & Labrador and Northwest Territories, and in Sweden. The diversity and locations of the Property, and the inter-connections amongst the Respondents, Atcon Industrial and Atcon Plywood, required the Receiver to utilize a number of differing realization methods to liquidate the Property of the Respondents, including tenders, real estate listings, auctions, litigation and joint-venture settlements, continuation of pre-receivership sales processes, and multi-party negotiations where a number of parties had an interest in the Property in question.
31. The Receiver has collected and realized upon the Property of the Respondents in the aggregate amount of \$26,335,849.20 as of May 18, 2012. The principal realizations and cash receipts are summarized as follows, and a more detailed account is contained in this report:

<u>Property/Transaction</u>	<u>Cash Proceeds</u>
Envirem Sale Transaction	\$4,235,238.93
Beechwood Property	\$170,670.33
Albian Receivable	\$8,432,503.30
Sharkbite Receivable	\$34,351.42
Garnishment Funds	\$1,246,374.23
Pennecon Settlement Amount	\$3,139,859.53
General Manson Way Property	\$696,072.82
Eastern Tender Property	\$3,443,442.49
Western Auction Property	\$541,606.12
Premier Sale Transaction	\$202,000.00
Suncor Settlement	\$2,500,000.00
Walsh Street Property	\$246,738.53
Airport Hangar	\$130,508.00
115 Whalen Street	\$24,352.53
Torbay Road Property	\$66,456.87
Sun Life Insurance Policy	\$325,205.93
CNRL Contract Funds	\$129,843.55

32. Attached hereto as **Appendix “C”** is a consolidated Statement of Receipts and Disbursements prepared by the Receiver for the period March 1, 2010 to May 18, 2012 (the “**R&D**”), and a chart setting out the net proceeds received by the Receiver with respect to the Property of the Respondents as of May 18, 2012 (the “**Net Proceeds Chart**”).
33. While the R&D and the Net Proceeds Chart list total receipts of \$30,665,134.99, such aggregate amount includes funds in the amount of \$2,226,504.00 received by the Receiver from the accounts of the Respondents following the CCAA Proceeding, \$1,200,000.00 borrowed by the Receiver pursuant to the provisions of the Receivership Orders, \$167,800.04 received from the purchaser of the Envirem business for Envirem operational expenses incurred during the course of this proceeding and the CCAA Proceeding, and \$734,981.75 in HST amounts. These amounts were not included in the gross Property realizations of \$26,335,849.20 cited above and discussed in greater detail below, as they were not the product of Property realizations of the Receiver and do not represent net proceeds available to eventually be distributed to the appropriate

stakeholders of the Respondents. Additionally, as set out in the R&D, the \$1,200,000 borrowed by the Receiver pursuant to the provisions of the Receivership Orders has been repaid.

Envirem Sale Transaction

34. Envirem previously operated a soil remediation and seasonal mulching business in the Province of New Brunswick. Prior to the commencement of this proceeding, Atcon Holdings Inc. (“**Atcon Holdings**”) had retained a financial advisor, initiated a sales process for a potential sale of its sole shareholder interest in Envirem, and was in discussions regarding the potential completion of a sale transaction.
35. Following the commencement of this proceeding, a sale of substantially all of Envirem’s assets was negotiated with the assistance of EYI in its capacity as Monitor in the CCAA Proceeding. The purchased assets that were to be included in the sale transaction were as follows:
 - (a) all Envirem inventory and raw materials;
 - (b) the Envirem trade accounts receivable listed on Schedule II to the sale agreement and new trade accounts receivable generated after the date of the sale agreement to the extent they were outstanding as of the closing of the sale transaction;
 - (c) the owned and leased Envirem vehicles, equipment and other tangible personal property used in connection with Envirem’s business, including owned equipment identified on Schedule III to the sale agreement and leased equipment identified on Schedule IV to the sale agreement that the purchaser was to assume or return;
 - (d) Envirem intellectual property, permits, licenses, goodwill and other intangible assets, prepaid deposits and expenses;
 - (e) Envirem’s rights under any operating agreements, leases, finance agreements and customer agreements (as listed on Schedule IV to the sale agreement);

- (f) the real property owned by Envirem and all of Envirem's interest in all plants and other buildings located thereon, together with improvements, fixtures and other appurtenances, which real property is as follows:
 - (i) real property located in Bayside, New Brunswick with PID 15086259;
 - (ii) real property located in Miramichi, New Brunswick with PID 40450389;
 - (iii) real property located in Miramichi, New Brunswick with PID 40450355;
 - (iv) real property located in Fredericton, New Brunswick with PID 1483031;
 - (v) real property located in the County of York, New Brunswick with PID 75165209, PID 75246660 and PID 75165480;
 - (vi) real property located in the County of Northumberland, New Brunswick with PID 40030413;
 - (vii) real property located in Miramichi, New Brunswick with PID 40406282 and PID 40164311;
 - (g) real property owned by Atcon Construction located in the County of Westmorland, New Brunswick with PID 70245741;
 - (h) real property owned by 633433 N.B. Inc. located in Miramichi, New Brunswick with PID 40219883; and
 - (i) real property owned by 604985 N.B. Inc. located in Miramichi, New Brunswick with PID 40278327.
36. EYI, in its capacity as Monitor in the CCAA Proceeding was of the view that the sale was in the best interests of the stakeholders of Envirem and recommended that the Court approve the sale of the Envirem business.
37. Pursuant to the Approval and Vesting Order of Justice Riordon dated March 22, 2010 granted in the CCAA Proceeding and the Approval and Vesting Order of Justice Riordon

dated March 22, 2010 granted in this proceeding (collectively, the “**Envirem Orders**”), a sale transaction with respect to substantially all of the Property of Envirem was approved by this Honourable Court (the “**Envirem Sale Transaction**”).

38. The Receiver reports that the Envirem Sale Transaction closed on April 28, 2011 and the net sale proceeds in the hands of the Receiver with respect to the Envirem Sale Transaction is \$4,235,238.93 (the “**Envirem Sale Proceeds**”).
39. The Envirem Sale Proceeds are being held by the Receiver pending an allocation of the net proceeds by this Honourable Court in accordance with the Envirem Orders. The Envirem Sale Transaction did not specify any allocation of the Envirem Sale Proceeds to specific purchased assets, other than the aggregate amount of \$1,295,812.29 that was allocated to inventory, accounts receivable and prepaid expenses.
40. The Bank, Caterpillar and Aviva (collectively the “**Envirem Creditors**”) hold security over various assets that were sold as part of the Envirem Sale Transaction. The Envirem Creditors, in consultation with the Receiver, have mutually agreed to a proceed/cost allocation methodology. As a result of this agreement, the Receiver proposes that the Envirem Sale Proceeds be allocated between the Envirem Creditors as follows:

(a)	The Bank	\$3,371,630.78
(b)	Caterpillar	723,925.96
(c)	Aviva	138,960.24
(d)	CRA	<u>721.95</u>
		\$4,235,238.93

Beechwood Property

41. Atcon Property Holdings Inc. (“**APH**”) was the owner of a residential property municipally known as 284 Beechwood Drive, Miramichi, New Brunswick (the “**Beechwood Property**”).

42. The Receiver entered into a listing agreement with a qualified local real estate agent in April 2010, and subsequently entered into an agreement of purchase and sale dated April 13, 2010 for the sale of the Beechwood Property for \$185,000.
43. The Receiver was of the view that it had conducted an appropriate market test for the Beechwood Property and recommended that this Honourable Court approve the sale of the Beechwood Property. Pursuant to the Approval and Vesting Order of Justice Riordon dated May 12, 2010 granted in this proceeding, the sale of the Beechwood Property was approved by this Honourable Court.
44. The Receiver reports that it realized net proceeds in the amount of \$170,670.33 with respect to the sale of the Beechwood Property (the "**Beechwood Proceeds**"), which were deposited into the Receiver's general operating account. for use by the Receiver to make payments (including interim payments) required or permitted by the Receivership Orders.

Albian Receivable

45. Atcon Construction previously provided earth moving, construction and related services to Albian Sands Energy Inc., an affiliate of Shell Canada ("**Albian Sands**") in the Province of Alberta under the Agreement for Earth Moving, Construction and Related Services dated November 1, 2008 between Atcon Construction and Albian Sands (the "**Albian Contract**"). The services provided by Atcon Construction were primarily related to the removal of muskeg in the Albian Oil Sands area near Fort McMurray, Alberta.
46. In connection with the services provided by Atcon Construction, an account receivable in the amount of \$8,432,503.30 was determined to be owed to Atcon Construction with respect to certain unpaid invoices (the "**Albian Receivable**"). During the course of the CCAA Proceeding, the Monitor worked in concert with Atcon Construction in an effort to facilitate payment of the Albian Receivable from Albian Sands.
47. A number of parties claimed an interest in the Albian Receivable. The Canada Revenue Agency (the "**CRA**") had issued requirements to pay to Shell Canada pursuant to section 227(4) of the *Income Tax Act* (Canada) in the maximum amount of \$4,750,074.57.

Emeco Canada Limited (“**Emeco**”) and Caterpillar each filed statements of lien upon interest in Crown materials in respect of Shell Canada’s interest in those minerals. The statements of lien were filed in connection with unpaid lease payments owed by Atcon Construction with respect to equipment claimed to be used by Atcon Construction in providing services under the Albion Contract. The Receiver also filed a statement of lien in Alberta upon interest in Crown materials in respect of Shell Canada’s interest in minerals in connection with the outstanding amounts owed to Atcon Construction under the Albion Contract.

48. Following lengthy negotiations amongst the parties, the parties agreed, subject to the approval of this Honourable Court, to the payment of the Albion Receivable to the Receiver on certain terms and conditions. Pursuant to the Order of Justice Riordon dated June 18, 2010 granted in this proceeding (the “**June 18 Order**”), the Albion Receivable was treated as follows:

- (a) \$3,427,865.97 was allocated to a separate interest bearing trust account established by the Receiver pursuant to the June 18 Order (the “**CRA Deemed Trust Claim Holdback**”) in connection with the deemed trust claim of CRA against the Property of Atcon Construction on account of alleged unremitted employee source deductions under the *Income Tax Act* (Canada), the *Employment Insurance Act* (Canada) and the *Canada Pension Plan* (the “**CRA Deemed Trust Claim**”);
- (b) \$996,345.70 was allocated to a separate interest bearing trust account pursuant to the June 18 Order in connection with the non-deemed trust claim of the CRA (the “**CRA Non-Deemed Trust Claim Holdback**”) against the Property of Atcon Construction on account of alleged amounts payable under the *Income Tax Act* (Canada), the *Employment Insurance Act* (Canada) and the *Canada Pension Plan* (the “**CRA Non-Deemed Trust Claim**” and collectively with the CRA Deemed Trust Claim, the “**CRA Claims**”); and
- (c) \$4,008,291.63 was held by the Receiver in a separate interest bearing trust account (the “**Builders’ Lien Holdback**”).

49. Following the granting of the June 18 Order, the Receiver, Caterpillar, the Bank and Emeco entered into further negotiations with respect to a potential distribution of the funds in the Builders' Lien Holdback. As a result of such negotiations, the Receiver recommended that the Court grant an Order authorizing the following distributions to be made from the Builders' Lien Holdback, which distributions were approved by the Order of Justice Riordon dated October 28, 2010 granted in this proceeding (the "**October 28 Order**"):
- (a) \$1,200,000 to be distributed by the Receiver to Caterpillar on account of a settlement agreement entered into between the Receiver, Caterpillar and the Bank that was approved by this Honourable Court in the October 28 Order with respect to builders' liens filed by Caterpillar (the "**Caterpillar Settlement Agreement**");
 - (b) \$228,900.22 and \$7,000 to be distributed by the Receiver to Emeco pursuant to the October 28 Order on account of its valid builders' lien and costs, respectively; and
 - (c) \$2,576,577.04, plus all accrued interest, to be distributed by the Receiver to the Bank pursuant to the October 28 Order on account of its valid security interest in the accounts receivable of Atcon Construction.
50. The Receiver reports that it continues to maintain the CRA Deemed Trust Claim Holdback and the CRA Non- Deemed Trust Claim Holdback in separate trust accounts, and as of May 18, 2012, the amounts in such accounts were \$3,814,364.93 (which include funds associated with the Garnishment Funds, more fully described below) and \$1,004,241.00, inclusive of earned interest, respectively.
51. In connection with the CRA Claims, the Receiver filed notices of objection and appeals with CRA in connection with the income tax, CPP and EI assessments and re-assessments of Atcon Construction related to such claims on May 21, 2010 and on June 7, 2010. The status of such objections and appeals is discussed in greater detail below.

Sharkbite Receivable

52. Atcon Construction previously provided design, engineering, procurement and construction services to Shell Canada Energy, an affiliate of Shell Canada, pursuant to the terms and conditions of the Engineering Services Agreement dated September 26, 2009 between Atcon Construction and Shell Canada Energy, and the Engineering, Procurement and Construction Contract dated December 21, 2009 between Atcon Construction and Shell Canada Energy (collectively, the “**Sharkbite Contracts**”). The Sharkbite Contracts were with respect to the construction of bridges and roads near the Albion Oil Sands area near Fort McMurray, Alberta, and was known as the Sharkbite Project.
53. Shell Canada Energy delivered notices of termination dated February 25, 2010 to Atcon construction with respect to the Sharkbite Contracts with a termination date effective as of February 26, 2010.
54. Following a review of the books and records of Atcon Construction, the Receiver agreed to the payment of \$34,351.42 (the “**Sharkbite Receivable**”) proposed by Shell Canada Energy as full and final satisfaction of the obligations of Shell Canada Energy to Atcon Construction under the Sharkbite Contracts.
55. Pursuant to the June 18 Order, the Sharkbite Receivable was paid to the Receiver. The Receiver reports that the Sharkbite Receivable was deposited into the Receiver’s general operating account for use by the Receiver pursuant to the June 18 Order to make payments (including interim payments) required or permitted by the Receivership Orders.

Garnishment Funds

56. A Garnishee Summons issued on December 1, 2009 by the Court of Queen’s Bench of Alberta (the “**Alberta Court**”) was served on Shell Canada and its affiliates in connection with amounts owed to Atcon Construction. The Garnishee Summons was with respect to an action commenced by Spruceland Lumber against Atcon Construction in the Province of Alberta.

57. In connection with the Garnishee Summons, Shell Canada paid \$1,245,905.15 to the Alberta Court on February 26, 2010. Following the bankruptcy of Atcon Construction on April 26, 2010, the Receiver took steps and recovered the funds paid by Shell Canada to the Alberta Court, which, upon receipt, was in the amount of \$1,246,374.23 (the **"Garnishment Funds"**).
58. The Receiver reports that the Garnishment Funds have been dealt with as follows:
- (a) \$356,410.71 was allocated to the CRA Deemed Trust Claim Holdback pursuant to the June 18 Order; and
 - (b) \$889,963.52 was deposited into the Receiver's general operating account for use by the Receiver pursuant to the June 18 Order to make payments (including interim payments) required or permitted by the Receivership Orders.

Pennecon Settlement Amount

59. Atcon Construction and Penney Construction Ltd. (**"Penney"**) had entered into a joint venture to supply all labour, material, tools and equipment required to complete all civil earthworks for plant site development of the Vale Inco Project.
60. Atcon Construction provided equipment rental and management services to Pennecon Heavy Civil Ltd. (**"PHC"**), an affiliate of Penney, in connection with the construction of the Vale Inco Project. As of May 1, 2010, the aggregate amount of \$3,558,810.55 was owed to Atcon Construction by PHC with respect to such services.
61. In May 2010, the Receiver entered into discussions with PHC and Penney with respect to payment of the outstanding amount, disputes with respect to alleged overcharges, and alleged amounts owed by Atcon Construction for interest, management fees and other administrative expenses under the limited partnership agreement between Atcon Construction and Penney.
62. As a result of the discussions, a settlement agreement dated May 27, 2010 was entered into which, among other things, provided for the payment of \$3,222,385.00 to the Receiver (the **"Pennecon Settlement Amount"**). The Receiver was of the view that the

settlement was a fair and reasonable settlement of the matters relating to the Pennecon receivable and recommended that the Court approve the settlement.

63. Pursuant to Order of Justice Riordon dated June 30, 2010 granted in this proceeding (the “**June 30 Order**”), the settlement agreement was approved by the Court. The Receiver reports that the Pennecon Settlement Amount has been dealt with as follows:

- (a) \$2,024,375.23 has been received by the Receiver and used pursuant to the June 30 Order to make payments (including interim payments) required or permitted by the Receivership Orders;
- (b) \$268,223.77 was distributed to CRA pursuant to the June 30 Order on account of the CRA’s claim under the *Excise Tax Act* (Canada); and
- (c) \$929,786.00 is being held by the Receiver pursuant to the June 30 Order in a separate interest bearing trust account (the “**Pennecon Holdback**”) established as a result of a mechanics lien action commenced by Caterpillar in the Province of Newfoundland & Labrador (the “**Newfoundland Lien Action**”).

64. The Receiver reports that, as of May 18, 2012, the Pennecon Holdback was in the amount of \$937,115.86.

65. The Receiver is of the view that, as a result of the Caterpillar Settlement Agreement discussed above, which provided for a discontinuation of the Newfoundland Lien Action, it is no longer necessary for the Receiver to maintain the Pennecon Holdback in a separate trust account. The Receiver is requesting that the funds in the Pennecon Holdback be distributed to the Bank as part of the Bank Collateral, as discussed in greater detail below.

General Manson Way Property

66. Atcon Construction was the owner of real property and a commercial building municipally known as 67-69 General Manson Way, Miramichi, New Brunswick (the “**General Manson Way Property**”). The General Manson Way Property was leased by Atcon Construction to Atcon Industrial which operated its business from the General

Manson Way Property and from interconnected adjacent real properties owned by Atcon Industrial. Atcon Industrial maintained a significant amount of owned and leased equipment, inventory, work-in-progress and supplies at the General Manson Way Property.

67. PricewaterhouseCoopers Inc. (“**PwC**”) was appointed by this Court as receiver of Atcon Industrial on March 30, 2010. PwC solicited *en bloc* offers for the sale of Atcon Industrial’s property located at the General Manson Way Property, as well as for the sale of the General Manson Way Property itself.
68. PwC received an offer with respect to the sale of the General Manson Way Property, among other things, with an allocated price of \$870,000 for the General Manson Way Property. The Receiver, following discussions with PwC and a review of an appraisal for the property, was of the view that the price to be paid was supported by the appraised value. The sale of the General Manson Way Property was supported, or not opposed, by the parties that had registered debentures and collateral mortgages against the property and was recommended by PwC.
69. Pursuant to the Order of Justice Riordon dated July 28, 2010 granted in this proceeding (the “**General Manson Way Order**”), the sale of the General Manson Way Property was approved by this Honourable Court.
70. The Receiver reports that it received \$690,982.86 in net sale proceeds in connection with the sale of the General Manson Way Property (the “**General Manson Way Proceeds**”), which amount is being held by the Receiver pending further Order of this Honourable Court pursuant to the General Manson Way Order. The General Manson Way Proceeds are net of approximately \$130,510 paid to PwC on account of its fees and disbursements relating to the sale of the General Manson Way Property and payment of certain tax arrears that formed a first charge on the General Manson Way Property.

Eastern Tender Property

71. Following its appointment, the Receiver identified the assets and property of Atcon Construction set out in **Appendix “D”** attached hereto located in the Province of New

Brunswick and the Province of Newfoundland & Labrador that would be suitable to form the basis of a tender sale process and potential *en bloc* sale of construction and quarry related assets (collectively, the “**Atcon Eastern Assets**”).

72. Following discussions with appraisers, liquidators and auctioneers, the Receiver determined that the best method to solicit offers for the Atcon Eastern Assets was to conduct a tender process. As a result, the Receiver brought a motion on July 28, 2010 in this proceeding seeking Court approval of the proposed tender process.
73. Pursuant to the Order of Justice Riordon dated July 28, 2010 granted in this proceeding (the “**Tender and Auction Order**”), this Honourable Court approved a tender process with respect to the Atcon Eastern Assets (the “**Tender Process**”).
74. Following the completion of the approved Tender Process and the tendering of offers, the Receiver identified the combination of tenders that maximized the net recovery from the Atcon Eastern Assets for the receivership estates of the Respondents.
75. Pursuant to twelve Approval and Vesting Orders of Justice Riordon dated September 29, 2010 granted in this proceeding, the sale of certain of the Atcon Eastern Assets to certain purchasers was approved by this Honourable Court.
76. The Receiver reports that it received \$3,443,442.49 in net sales proceeds in connection with the sales of Atcon Eastern Assets that have been completed to date (the “**Eastern Tender Proceeds**”). The Eastern Tender Proceeds were deposited into the Receiver’s general operating account for use by the Receiver to make payments (including interim payments) required or permitted by the Receivership Orders.

Western Auction Property

77. Following its appointment, the Receiver located and took control over various construction machinery and equipment (such as excavators, generators, solar powered signs, and other construction items), vehicles and trailers owned by the Respondents and located in the Province of Alberta and the Northwest Territories, which Property is

described in greater detail in **Appendix “E”** attached hereto (collectively, the **“Western Auction Property”**).

78. With respect to realization options for the Western Auction Property, the Receiver was of the view that, as the Western Auction Property was comprised of small construction pieces that were remotely situated on leased lands, a competitive auction conducted on the leased lands would generate the maximum return for the receivership estate. As a result, the Receiver contacted auctioneers/liquidators and requested proposals for the sale of the Western Auction Property at a public auction.
79. Following a review of the submitted proposals, the Receiver determined that the proposal submitted by Century Services Inc. (**“Century”**) was the best proposal submitted, as Century had an enhanced understanding of the property, offered a net minimum guarantee amount and a competitive commission structure. As a result, the Receiver sought Court approval on July 28, 2010 of an auction agreement entered into with Century for the Western Auction Property.
80. Pursuant to the Tender and Auction Order, this Honourable Court approved the auction agreement between Century and the Receiver with respect to the Western Auction Property.
81. The Receiver reports that it received \$541,606.12 in net sale proceeds in connection with the sale of the Western Auction Property (the **“Western Auction Proceeds”**). The Western Auction Proceeds were deposited into the Receiver’s general operating account for use by the Receiver to make payments (including interim payments) required or permitted by the Receivership Orders.

Premier Sale Transaction

82. As noted above, Atcon Construction provided equipment rental and management services to PHC in connection with the construction of the Vale Inco Project. Atcon Construction was the owner of ten pieces of equipment situated on the Vale Inco Project site and used by PHC (the **“Newfoundland Property”**).

83. Following a consideration of potential realization options with respect to the Newfoundland Property and obtaining an appraisal for the property, the Receiver determined that it would be in the best interests of the receivership estate to determine whether PHC and Premier Construction Ltd. ("**Premier**"), an affiliate of PHCL, would be interested in acquiring the Newfoundland Property.
84. The Receiver and Premier were able to successfully negotiate an asset purchase agreement for the sale of the Newfoundland Property, which agreement was subject to Court approval. The Receiver sought approval of this Honourable Court of the sale transaction on October 28, 2010.
85. Pursuant to the Approval and Vesting Order of Justice Riordon dated October 28, 2010 granted in this proceeding, this Honourable Court approved a sale of the Newfoundland Property to Premier (the "**Premier Sale Transaction**").
86. The Receiver reports that it received \$202,000 in net sale proceeds in connection with the sale of the Newfoundland Property under the Premier Sale Transaction (the "**Premier Sale Proceeds**"). The Premier Sale Proceeds were deposited into the Receiver's general operating account for use by the Receiver to make payments (including interim payments) required or permitted by the Receivership Orders.

Suncor Settlement

87. Atcon Construction was previously engaged by Suncor Energy Oil Sands Limited Partnership ("**Suncor LP**") to provide certain engineering, procurement and construction materials and services in respect of the construction of roadway infrastructure improvements at Highway #63, which is adjacent to the Suncor oil sands operations located north of Fort McMurray, Alberta (the "**Suncor Project**"). The services were to be provided pursuant to the terms of the Highway 63 Interchange Engineering, Procurement and Construction, Multiple Use Contract No. 4600004026 with an effective date of August 11, 2006 between Atcon Construction and Suncor LP (the "**Suncor Contract**").

88. As a result of a number of disputed billing issues between Atcon Construction and Suncor LP in connection with the services provided by Atcon Construction under the Suncor Contract., Atcon Construction commenced an action on May 14, 2009 by way of statement of claim against Suncor LP, Suncor Energy Inc. and Suncor Energy Services Inc. (collectively, "**Suncor**") with the Court of Queen's Bench of Alberta, Judicial Centre of Calgary (the "**Suncor Action**").
89. Following its appointment, the Receiver retained legal counsel and entered into without prejudice settlement discussions with Suncor regarding matters relating to the Suncor Action and the Suncor Contract. As a result of such discussions, a settlement of the Suncor Action was reached between the Receiver and Suncor, subject to the Receiver obtaining this Honourable Court's approval of the terms of the settlement. The Receiver was of the view that the settlement agreement represented a fair and reasonable settlement of the matters relating to the Suncor Action and the Suncor Contract, and sought Court approval of the settlement on December 3, 2010.
90. Pursuant to the Order of Justice Riordon dated December 3, 2010 granted in this proceeding, this Honourable Court approved the settlement in connection with the Suncor Action and the Suncor Contract.
91. The Receiver reports that it has received \$2,500,000.00 in connection with the Suncor settlement (the "**Suncor Settlement Proceeds**"). The Suncor Settlement Proceeds were deposited into the Receiver's general operating account for use by the Receiver to make payments (including interim payments) required or permitted by the Receivership Orders.

Walsh Street Property

92. APH was the registered owner of real property and a commercial building municipally known as 170 Walsh Street, Miramichi, New Brunswick (the "**Walsh Street Property**"). The Walsh Street Property was previously leased by APH to Atcon Industrial, which operated its machining division at the Walsh Street Property. As a result of such operations, significant amounts of equipment owned by Atcon Industrial were located at

the Walsh Street Property and subject to the receivership of Atcon Industrial (the “**AIS Machining Equipment**”).

93. As with the General Manson Way Property, following PwC’s appointment as receiver and receiver manager of Atcon Industrial on March 30, 2010, PwC and the Receiver discussed potential methods to realize upon the AIS Machining Equipment and the Walsh Street Property in a coordinated manner that would facilitate the greatest recovery being achieved for the stakeholders of Atcon Industrial and APH.
94. The Receiver and PwC agreed that a going concern or *en bloc* sale of the AIS Machining Equipment and the Walsh Street Property would likely be in the best interests of the stakeholders of both Atcon Industrial and APH. PwC subsequently entered into an auction agreement with Infinity Asset Solutions for a going concern marketing and sale process to be conducted with respect to the Walsh Street Property, which auction agreement was approved by this Court in the Atcon Industrial receivership proceeding.
95. A sale of the Walsh Street Property did not materialize following Infinity’s going concern marketing and sale process, and as a result, the Receiver listed the Walsh Street Property with a qualified local real estate agent.
96. As a result of the listing, and following a review of an appraisal for the Walsh Street Property obtained by PwC and discussions with its real estate agent, the Receiver entered into a sale agreement for the Walsh Street Property, subject to Court approval. The Receiver was of the view that the sale agreement provided a fair and reasonable realization for the Walsh Street Property and recommended that the Court approve the sale in its motion on May 10, 2011.
97. Pursuant to the Approval and Vesting Order of Justice Riordon dated May 10, 2011 granted in this proceeding, this Honourable Court approved the sale of the Walsh Street Property.
98. The Receiver reports that it received \$246,738.53 in net sale proceeds in connection with the sale of the Walsh Street Property (the “**Walsh Street Proceeds**”). The Walsh Street Proceeds were deposited into the Receiver’s general operating account for use by the

Receiver to make payments (including interim payments) required or permitted by the Receivership Orders.

Airport Hangar

99. Atcon Logistics Inc. was the owner of an airport hangar situated on land leased from the Miramichi Airport Commission (1993) Inc. (“MAC”) and municipally known as 50 Airport Road, Miramichi, New Brunswick (the “**Airport Hangar**”).
100. The Receiver listed the Airport Hangar with a qualified local real estate agent and received an offer to purchase in November 2010, subject to Court approval. The Receiver recommended that the Court approve the sale of the Airport Hangar which the Court did in the Approval and Vesting Order of Justice Riordon dated December 3, 2010.
101. As previously reported to this Court, the sale transaction for the Airport Hangar that was approved in December 2010 was eventually terminated, and the Receiver re-listed the Airport Hangar in February 2011.
102. The Receiver entered into an agreement of purchase of sale with MAC for the sale of the Airport Hangar, subject to Court approval. Pursuant to the Approval and Vesting Order of Justice Riordon dated August 15, 2011 granted in this proceeding, this Honourable Court approved the sale of the Airport Hangar to MAC.
103. The Receiver reports that it received \$130,508.00 in net sale proceeds with respect to the sale of the Airport Hangar (the “**Airport Hangar Proceeds**”). The Airport Hangar Proceeds were deposited into the Receiver’s general operating account for use by the Receiver to make payments (including interim payments) required or permitted by the Receivership Orders.

115 Whalen Street

104. Atcon Construction was the owner of real property municipally known as 115 Whalen Street, Miramichi, New Brunswick (“**115 Whalen Street**”). The Receiver listed the property with a qualified local real estate agent and subsequently entered into an agreement for the sale of the property for \$32,000 based on an offer received.

105. Pursuant to the Vesting Order of Justice Riordon dated September 15, 2011 granted in this proceeding, this Honourable Court approved the vesting of 115 Whalen Street to the purchaser.
106. The Receiver reports that it received \$24,352.53 in net proceeds with respect to the sale of 115 Whalen Street ("**115 Whalen Street Proceeds**"). The 115 Whalen Street Proceeds have been deposited into the Receiver's general operating account for use by the Receiver to make payments (including interim payments) required or permitted by the Receivership Orders.

Torbay Road

107. APH was the owner of real property municipally located on Torbay Road in Miramichi, New Brunswick and identified as PID 40441917 (the "**Torbay Road Property**"). The Receiver listed the property with a qualified local real estate agent and subsequently entered into an agreement for the sale of the property.
108. As noted above, the Receivership Orders permit the Receiver to complete a sale of the Property of the Respondents for less than \$100,000 in a single transaction, and less than \$1,000,000 in aggregate transactions. As the offer for the Torbay Road Property was less than \$100,000, and the aggregate of such sales has not exceeded \$1,000,000, and as the purchaser did not request Court approval of the sale, the sale was completed without Court approval.
109. The Receiver reports that it received \$66,456.87 in net proceeds with respect to the sale of the Torbay Road Property (the "**Torbay Road Proceeds**"). The Torbay Road Proceeds have been deposited into the Receiver's general operating account for use by the Receiver to make payments (including interim payments) required or permitted by the Receivership Orders.

Sun Life Policy

110. The Receiver brought a motion in this proceeding on March 18, 2011 to recover the amount of approximately \$280,000 in connection with the cash surrender value of a life

insurance policy on the life of Mr. Robert W. Tozer (“**Mr. Tozer**”) where Atcon Group was the listed owner and beneficiary of the policy.

111. Pursuant to the Decision of Justice Riordon dated April 12, 2011 and the Order of Justice Riordon dated June 15, 2011 granted in this proceeding, the Receiver’s motion was granted and the Receiver was authorized and directed to direct the insurer, Sun Life Financial, to terminate the life insurance policy and pay the cash surrender value of the policy to the Receiver. However, pursuant to the terms of the Order, no action was to be undertaken by the Receiver until any appeal of the Order was finally determined, and Mr. Tozer was to have thirty days following a final decision to enter into an assignment arrangement with the Receiver for the policy.
112. The Receiver reports to this Honourable Court that Mr. Tozer appealed the Decision and Order of Justice Riordon, and the appeal was heard by the Court of Appeal of New Brunswick on February 15, 2012. Mr. Tozer’s appeal was dismissed by the panel of the Court of Appeal on February 15, 2012, and reasons for the Court’s decision were released on July 5, 2012.
113. Following the dismissal of his appeal, Mr. Tozer agreed to pay the cash surrender value of the policy of \$320,205.93 (the “**Sun Life Policy Proceeds**”) to the Receiver, along with \$5,000 in anticipation of costs to be awarded with respect to the appeal, in consideration for an assignment of the Sun Life policy. The Court of Appeal awarded \$3,000 in costs against Mr. Tozer, and as Mr. Tozer previously paid \$5,000 in costs, the Receiver returned \$2,000 to Mr. Tozer on July 9, 2012 by sending a cheque in this amount to his solicitor.
114. The assignment of the Sun Life policy has been effected and the Receiver received \$325,205.93 on March 8, 2010, and this amount was deposited in the Receiver’s general operating account to be used by the Receiver to make payments (including interim payments) required or permitted by the Receivership Orders.

Other Realized Property

115. The Receiver reports that, in addition to the asset realizations described above, the Receiver is in possession of further proceeds of the Property of the Respondents realized by the Receiver, which Property proceeds includes:
- (a) \$442,181.77 of accounts receivable owing to Atcon Construction;
 - (b) \$50,000.00 of aggregates owned by Atcon Construction and located in the Province of Alberta;
 - (c) \$89,250.00 of trailer and ancillary assets owned by Atcon Construction and located in the Northwest Territories;
 - (d) \$34,500.00 of ancillary assets owned by Atcon Construction and located in the Northwest Territories;
 - (e) \$46,919.00 of construction equipment located in the Province of Newfoundland & Labrador;
 - (f) \$9,863.13 of cash on hand; and
 - (g) \$97,910.72 of accrued interest earned to May 18, 2012.

Property Remaining to be Realized

116. Since its appointment, the Receiver has recovered and realized upon a significant portion of the Property of the Respondents. However, the Receiver continues to take steps to realize upon the remaining Property of the Respondents. The Property of the Respondents that remains to be realized upon, and the steps taken by the Receiver to date, are summarized below.
117. The Receiver will report to this Honourable Court at a future date with respect to the status of realization efforts in respect of all outstanding Property.

Nelson Street Properties and St. Patrick's Drive Property

118. Atcon Management Services Inc. ("AMS") was the registered owner of real property located in Miramichi, New Brunswick and identified as PID 40221426, PID 40219941, PID 40221434 (collectively, the "**Nelson Street Properties**") and PID 40466039 (the "**St. Patrick's Drive Property**"). The Nelson Street Properties comprised approximately 3.97 acres and are located across from the plywood mill formerly operated by Atcon Plywood. The St. Patrick's Drive Property is located near the Atcon Plywood mill.
119. The Nelson Street Properties and the St. Patrick's Drive Property were included in the Atcon Eastern Assets that were subject to the Tender Process. A sale of the Nelson Street Properties and the St. Patrick's Drive Property was approved by the Court on September 29, 2010; however, such sale transaction was not completed.
120. The Receiver subsequently listed the Nelson Street Properties and the St. Patrick's Drive Property with a qualified local real estate agent for 210 days from December 21, 2010 to June 30, 2011. No offers were received for the Nelson Street Properties and the St. Patrick's Drive Property during that time period.
121. The Receiver discussed potential realizations for the Nelson Street Properties and the St. Patrick's Drive Property with PwC, who was attempting to realize upon the property of Atcon Plywood. As a result of the lack of offers, the Receiver was of the view that the best method to maximize realizations for the Nelson Street Properties and the St. Patrick's Drive Property was to include the properties in an *en bloc* marketing of the assets by PwC.
122. PwC received offers for the purchase of certain assets of Atcon Plywood, which included an offer to purchase the Nelson Street Properties and the St. Patrick's Drive Property. The offer that was ultimately accepted by PwC allocated \$24,000 to the purchase of the Nelson Street Properties and the St. Patrick's Drive Property as an *en bloc* amount. Based on an appraisal obtained by the Receiver, it was of the view that the *en bloc* price was supported by the properties' appraised values. As a result, the Receiver

recommended that the Court approve the sale of the Nelson Street Properties and the St. Patrick's Drive Property.

123. Pursuant to the Approval and Vesting Order of Justice Riordon dated August 15, 2011 granted in this proceeding, this Honourable Court approved the sale of the Nelson Street Properties and the St. Patrick's Drive Property. The Receiver understands that the purchaser failed to close the sale of the Nelson Street Properties and the St. Patrick's Drive Property by the June 15, 2012 deadline.
124. A motion was heard in the Atcon Plywood receivership proceeding on July 17, 2012 with respect to this matter. In that motion, PwC recommended that this Honourable Court approve a revised offer that was received from the purchaser that failed to close the previously approved transaction. Pursuant to an Approval and Vesting Order dated July 17, 2012 granted in this proceeding and an Approval and Vesting Order dated July 17, 2012 granted in the Atcon Plywood receivership proceeding, the revised offer was approved by this Honourable Court, with the condition that the purchaser had to provide its solicitor with funds by Friday July 20, 2012 at 5:00 pm AST. If this condition was not met, this Honourable Court authorized PwC to continue to market the Atcon Plywood property.
125. The Receiver understands that the purchaser did not comply with the condition and PwC will be taking steps to seek offers for the Atcon Plywood assets from potential purchasers. The Receiver will discuss with PwC the inclusion of the Nelson Street Properties and the St. Patrick's Drive Property in the offers being sought.
126. The Receiver will update this Honourable Court on the status of matters relating to the Nelson Street Properties and the St. Patrick's Drive Property at a later date.

CRA Claims

127. As has previously been reported, CRA issued notices of assessment dated February 26, 2010 to Atcon Construction in connection with alleged unremitted employee income tax, CPP and EI source deductions, along with certain penalties. The aggregate amounts of the assessments are in excess of \$9.0 million. The Receiver understands that the amounts

contained in the assessments were originally assessed against Ledwell Construction Labour Limited, a third-party that provided services to Atcon Construction.

128. The Receiver filed notices of objection and appeals with the CRA in connection with the income tax, CPP and EI assessments and re-assessments of Atcon Construction related to such claims on May 21, 2010 and on June 7, 2010.
129. The Receiver received written confirmation dated October 21, 2011 that, notwithstanding the Receiver's notices of objection, the CRA appeals officer determined that the CPP/EI assessments for taxation years 2007, 2008 and 2009 remain payable by Atcon Construction, and that the CPP/EI assessments for taxation years 2005 and 2006 were cancelled as a result of the expiry of the applicable limitation periods. The Receiver received a similar written confirmation with respect to the income tax assessments.
130. The Receiver, following a discussion with representatives of the Bank, being the creditor with the primary interest in the recovery of the funds subject to the CRA claim, decided to appeal the CRA objections. As a result, the Receiver filed appeals with the Tax Court of Canada on January 18, 2012. The Department of Justice, on behalf of the Crown, issued replies to the Receiver's appeals on March 28, 2012. In the replies, the Crown takes the position that Atcon Construction is liable for the statutory payroll deductions withheld from the salaries for the individuals in question.
131. The Receiver is currently working with its legal counsel to prepare for document discoveries in connection with the appeals. The Receiver will update this Honourable Court on the status of the appeals at a later date.

Atcon Eastern Assets Real Property

132. The parcels of real property located in the Province of New Brunswick and listed on Appendix "E" attached hereto were offered for sale and were available for purchase as part of the Tender Process. The sale of the properties was not completed in the Tender Process, and the Receiver has taken steps to list the properties with a qualified local real estate agent.

Deh Cho

133. As previously reported, Atcon Construction was to provide engineering, bridge fabrication and design services to Deh Cho Bridge Corporation (“**DCBC**”) in connection with the construction of a bridge across the Mackenzie River near Fort Providence, Northwest Territories. In December 2009, DCBC provided written notice of the termination of the Deh Cho contract to Atcon Construction.
134. Since its appointment, the Receiver has been, and continues to be, engaged in discussions with DCBC and the Government of the Northwest Territories with respect to the outstanding claims of Atcon Construction under the Deh Cho contract.
135. The receiver and its counsel expect to meet with representatives of the Government of the Northwest Territories and its counsel in the near future to advance settlement discussions between the parties.

Brun-way

136. Atcon Construction is the owner of a thirty per cent (30%) minority interest in Brun-way Highway Operations Inc. (“**Brun-way**”). Brun-way’s business is focussed on the operation, maintenance and rehabilitation of 275 kilometres of highway that runs from the Quebec Border to west of Fredericton, and between Woodstock and the U.S. border.
137. The Receiver has periodically communicated with and engaged in discussions with SNC-Lavalin, the majority shareholder of Brun-way, regarding potential realization options for Atcon Construction’s interest in Brun-way. Under the Brun-way unanimous shareholder agreement, SNC-Lavalin has the right to acquire Atcon Construction’s interest in Brun-way for its fair market value. SNC-Lavalin has not chosen to exercise this right to date. In light of the positions of the parties, the Receiver expects that it may take a significant period of time to realize on the interests of Atcon Construction in Brun-way. The Receiver will provide an update to this Court at a later date.

Vanerply

138. As previously reported, the Atcon companies included two Swedish subsidiaries, OPI AB (“**OPI**”) and Vanerply AB (now known as OPI Plywood AB) (“**Vanerply**”). OPI is a direct subsidiary of Atcon Group Inc. (“**Atcon Group**”), which granted security upon all of its property to the Bank. Vanerply is a direct subsidiary of OPI. The Receiver understands that neither Vanerply nor OPI have granted security to any of the Secured Creditors.
139. OPI is a holding company. Vanerply was in the business of manufacturing and distributing plywood for the domestic Swedish market as well as the export-market. Vanerply was a stand-alone business and was not involved in the businesses carried on by the Atcon companies.
140. The Atcon Group of Companies engaged a financial advisor in October 2009 to conduct a marketing and sale process for its interests in OPI and Vanerply. Following its appointment, the Receiver commenced discussions with OPI, Vanerply and the financial advisor regarding the sale process.
141. The Receiver conducted a review of the business and affairs of OPI and Vanerply with a view to determining how best to maximize the value of Atcon Group’s direct share interest in OPI and its indirect share interest in Vanerply for the benefit of the Atcon Group receivership estate and its stakeholders. To that end, representatives of the Receiver travelled to Sweden, met with representatives of OPI and Vanerply, engaged Swedish professional advisors and had ongoing communications and discussions with OPI and Vanerply concerning the best method of recovering value for the Atcon Group receivership estate. The Receiver previously reported to the Court on the Vanerply sale transaction and certain related matters.
142. Following a lengthy sale process, an agreement of purchase and sale was entered into in May 2011 for the sale of the Vanerply business and certain real property located in Sweden. The sale transaction was subject to the approval of this Honourable Court. The sale transaction was supported by Vanerply management and the boards of OPI and

Vanerply. The Receiver was of the view that the sale transaction represented a reasonable realization on the assets and operations of Vanerply, and recommended that this Court approve the sale transaction.

143. Pursuant to an Approval Order of Justice Riordon dated June 15, 2011, the Vanerply sale transaction was approved by this Court.
144. As a result of the closing of the Vanerply sale transaction and the collection of accounts receivable and tax rebates, approximately \$6.3 million is presently being held in Vanerply's bank accounts. As OPI is a holding company, and Vanerply had sold its business, it was determined that the initiation of a mortification application and liquidation in Sweden was appropriate and necessary to wind-down both OPI and Vanerply, so that the net proceeds available following the completion of the processes could be distributed to the Receiver, in its capacity as receiver of Atcon Group, as a result of Atcon Group's ownership of OPI and Vanerply.
145. The mortification application was published in the Swedish Gazette in October 2011, and a one-year period must elapse before a Swedish Court will decide if it will approve the mortification application to eliminate any uncertainty related to certain share certificates that had been issued but cannot be located, as previously reported to this Court. Magnus Knape, a Swedish resident, a Swedish lawyer, an experienced liquidator and member of the boards of OPI and Vanerply, agreed to act as liquidator for the liquidation of OPI and Vanerply (the "**Swedish Liquidator**"). The liquidation application was filed effective February 1, 2012, and the liquidation process is on going. As liquidator, Mr. Knape is in possession of the approximately \$6.3 million of the net proceeds from the post-closing collection of accounts receivable and tax rebates, net of the payment of liabilities of Vanerply not assumed by the purchaser.
146. The Swedish Liquidator is not yet in a position to make distributions from Vanerply to OPI and from OPI to the Receiver of Atcon Group, the sole shareholders of OPI. The Receiver understands that the Swedish Liquidator will not be in a position to make such distributions until the early fall of this year, following the expiration of the claims periods in respect of the Vanerply and OPI liquidations and the OPI mortification process. The

Receiver intends to pursue the recovery of such distributions on account of Atcon Group's interest in Vanerply and OPI and to seek approval to distribute any such distributions to the stakeholder with the priority claim to such amounts.

CNRL Contract Funds

147. Atcon Construction provided a variety of contractor services to Canadian Natural Resources Ltd. ("CNRL") in the Province of Alberta. Gowling Lafleur Henderson LLP ("Gowlings"), in its capacity as counsel to Atcon Construction, received certain funds from CNRL in trust in connection with the services provided by Atcon Construction to CNRL (the "CNRL Contract Funds"). Gowlings released \$129,843.55 of CNRL Contract Funds to the Receiver on April 19, 2012.
148. Gowlings has confirmed that it has in its trust account the aggregate amount of approximately \$175,500 with respect to the CNRL Contract Funds (collectively, the "Remaining CNRL Funds").
149. Gowlings has taken the position that it is entitled to apply the Remaining CNRL Funds in satisfaction of the outstanding accounts owed to it by Atcon Construction in priority to all other parties with an interest in Atcon Construction's property. Both the Receiver and the Bank disagree with Gowlings' position.
150. Gowlings, the Receiver and the Bank engaged in settlement discussions with respect to the Remaining CNRL Contract Funds, but no settlement was able to be reached. As a result, the Receiver will be bringing a motion in this proceeding later this year to address entitlement to the Remaining CNRL Funds.

Litigation

151. The Receiver has commenced two actions in the Province of New Brunswick in connection with certain amounts owed to the Respondents based on their books and records.
152. The Receiver commenced an action on behalf of Atcon Group and AMS against Mr. Tozer, 504041 N.B. Ltd., and The Robert Tozer Family Trust (2008), being the

shareholders of Atcon Group (the “**Defendants**”). Atcon Group and AMS made a series of transfers of funds to the Defendants over a period of several years. As of August 3, 2010, the Defendants were indebted to Atcon Group in the amount of \$632,834.80 and AMS in the amount of \$83,198.04, for a total of \$716,032.84. The Defendants have issued a statement of defence, denying that any amount is owed to either Atcon Group or AMS.

153. The Receiver also commenced an action on behalf of Atcon Holdings and Atcon Group against South West Forest Management Ltd. (“**South West**”), a company controlled by Mr. Tozer. Atcon Holdings and Atcon Group made a series of transfers of funds to South West over a period of several years. As of April 1, 2010, South West was indebted to Atcon Group in the amount of \$385,578.68 and Atcon Holdings in the amount of \$1,068,703.85. South West has issued a statement of defence, denying that any amount is owed to either Atcon Holdings or Atcon Group.
154. The Receiver intends to continue to pursue these actions and will provide an update on the status of the actions to this Honourable Court at a later date.

MRDC

155. Between 1998 and 2000, Atcon Construction was the major excavation subcontractor for MRDC Construction Joint Venture (“**MRDC**”), which built the Fredericton-Moncton Highway. During the course of the work, numerous disputes arose between Atcon Construction and MRDC, which in turn led to various arbitrations and lawsuits. Between 2001 and 2005 approximately eight arbitrations were held, in which Atcon Construction was successful in seven and partially successful in the eighth.
156. At the time of the commencement of this proceeding and the CCAA Proceeding, New Brunswick counsel that previously represented Atcon Construction had worked with an expert to assess Atcon Construction’s damages on the next claim to be arbitrated.
157. In an effort to determine whether there is any potential value to be realized for Atcon Construction’s stakeholders in connection with any claims still to be arbitrated, the

Receiver has engaged Atcon Construction's former counsel to obtain its views on the remaining claims.

158. The Receiver continues to discuss this matter with counsel and will provide a status update to this Honourable Court at a later date.

1 Whalen Street

159. Atcon Construction was the owner of real property municipally known as 1 Whalen Street, Miramichi, New Brunswick ("1 Whalen Street"). The property was listed as part of the Tender Process and a single offer was received. The offer was below the appraised value of the property and thus was rejected by The Receiver. The Receiver listed the property with a qualified local real estate agent and subsequently entered into an agreement for the sale of the property for \$17,000 based on an offer received.
160. Pursuant to the Vesting Order of Justice Riordon dated July 18, 2012 granted in this proceeding, this Honourable Court approved the vesting of 1 Whalen Street to the purchaser.
161. The Receiver expects to receive the net proceeds with respect to the sale of 1 Whalen Street by July 31, 2012 at which time they will be deposited into the Receiver's general operating account for use by the Receiver to make payments (including interim payments) required or permitted by the Receivership Orders.

Atcon Industrial

162. As noted above, certain of the Atcon Group of Companies were subject to the CCAA Proceeding in which EYI was appointed Monitor. Atcon Industrial was also subject to the CCAA Proceeding.
163. Following the completion of the CCAA Proceeding and the Court-appointment of EYI as Receiver and PwC as receiver of Atcon Industrial, the Receiver calculated a series of costs that were directly associated with preserving and protecting Atcon Industrial's assets during the CCAA Proceeding and were either paid directly by the Receiver or paid by Atcon Construction during the CCAA Proceeding. Such costs include wages and

benefits, equipment leasing charges, and certain applicable fees and disbursements of the Monitor and its counsel.

164. The Receiver is of the view that such costs served to benefit the secured creditors of Atcon Industrial and are properly allocated amongst the secured creditors of Atcon Industrial. The Receiver anticipates that the allocation and recovery of these costs will be addressed by PwC at a distribution hearing before this Honourable Court in the Atcon Industrial receivership proceeding.

CLAIMS AGAINST PROCEEDS OF REALIZATIONS

Court-Ordered Charges

165. In the course of this proceeding, certain priority charges have been granted by this Honourable Court against the Property of the Respondents. Such charges are as follows (collectively, the “**Court-Ordered Charges**”):
- (a) “Administrative Charge” granted as security for payment of the reasonable fees and disbursements of the Receiver and its counsel, pursuant to paragraph 19 of the March 2 Order;
 - (b) “Receiver’s Indemnity Charge” granted as security for all of the obligations of the Receiver incurred, pursuant to paragraph 23 of the March 2 Order;
 - (c) “Receiver’s Borrowings Charge” granted as security for the payment of monies borrowed by the Receiver, pursuant to paragraph 26 of the March 2 Order; and
 - (d) “Replacement Charge” granted over all the Property of Atcon Construction that was subject to CRA notices of requirement to pay and the CRA Deemed Trust Claim, other than the CRA Deemed Trust Claim Holdback and the CRA Non-Deemed Trust Claim Holdback, as security for any deficiency faced by a builders’ lien claimant or a secured creditor as a result of the establishment of the holdbacks and payment of the claims to CRA, pursuant to the June 18 Order.

166. Pursuant to the Receivership Orders, the Administrative Charge forms a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, but subject to environmental remediation claims under section 14.06(7) of the BIA, and secured claims for certain unpaid wages and pension plan amounts under sections 81.4(4) and 81.6(2) of the BIA (the “**BIA Claims**”).
167. The Receivership Orders provide that the Receiver’s Indemnity Charge stands in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, but subject to the Administrative Charge and the BIA Claims.
168. The Receivership Orders provide that the Receiver’s Borrowings Charge stands in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any person, but subject to the Administrative Charge, the Receiver’s Indemnity Charge, and the BIA Claims.
169. Pursuant to the June 18 Order, the Replacement Charge is subordinate to, among other things, the Administrative Charge, the Receiver’s Indemnity Charge and the Receiver’s Borrowing’s Charge.

The Bank’s Credit Facilities and Security

170. The Bank was the operating lender to the Atcon Group of Companies and its affiliates pursuant to credit facilities entered into in 2006 and 2007. The Bank also provided a term loan facility to the Atcon Group of Companies and its affiliates to re-finance certain pre-existing term loans.
171. The Bank obtained guarantees in connection with such credit facilities, and obtained a general security agreement from the borrower and each guarantor, along with collateral mortgages from certain of the guarantors as security for the obligations owed to the Bank.
172. In June 2009, the Bank acquired the debt owing to, and the security in favour, of MG Stratum Fund III, Limited Partnership and Roynat Capital Inc. (collectively, the “**Sub-Debt Lenders**”), who were lenders to the Atcon Group of Companies and its affiliates

pursuant to credit facilities entered into in April 2006, as amended. The Sub-Debt Lenders had obtained guarantees in connection with the credit facilities and obtained a general security agreement from the borrower and each guarantor, along with debentures over real property from certain of the guarantors, as security for the obligations owed to the Sub-Debt Lenders. The Sub-Debt Lenders assigned their debt and security documents to the Bank in June 2009 following payment by the Bank to the Sub-Debt Lenders of amounts equal to the amounts owing to the Sub-Debt Lenders.

173. In connection with June 2009 re-financing, the Province provided: (i) a \$20,000,000 guarantee to the Bank in connection with the repayment of the loans to the Sub-Debt Lenders; (ii) a \$20,000,000 guarantee to the Bank in connection with a working capital term loan; (iii) a \$10,000,000 guarantee to the Bank in connection with a capital expenditures loan; and (iv) a guarantee with respect to the \$13.36 million letter of credit that was issued in connection with the Deh Cho project.
174. As all of the Property of the Respondents realized to date was located in either New Brunswick, Newfoundland & Labrador, Alberta or Northwest Territories, the Receiver engaged Borden Ladner Gervais LLP (“BLG”), along with Mr. Harry H. Williamson, Q.C. in New Brunswick, the law firm of Ottenheimer Baker (“Ottenheimer”) in Newfoundland & Labrador and the law firm of Lawson Lundell LLP (“Lawson”) in Northwest Territories to provide opinions and advice to the Receiver in connection with the security granted by the Respondents to the Bank and governed by the laws of New Brunswick, Newfoundland & Labrador, Alberta and Northwest Territories. Copies of the opinions received by the Receiver are attached hereto as **Appendix “F”**. (In the course of this report, references are made to the Receiver’s understanding in connection with registrations made under personal property and real property security and registration laws in the jurisdictions mentioned above. The Receiver’s understandings of these matters arise from its reviews of information it acquired as Receiver and reports and advice it received from the law firms mentioned above.)
175. More specifically, the Receiver requested:

- (a) opinions under the laws of the Provinces of New Brunswick, Alberta and Newfoundland & Labrador, and the Northwest Territories as to the validity and enforceability of the security held by the Bank against the personal property of the Atcon Group of Companies governed by the *Personal Property Security Act* (the “PPSA”) of each jurisdiction;
- (b) an opinion under the laws of the Province of New Brunswick as to the validity and enforceability of the security held by the Bank against leasehold interests in real property, and licenses to remove aggregates from certain quarries located in New Brunswick, held by certain of the Respondents;
- (c) an opinion under the laws of the Province of New Brunswick as to the validity and enforceability of the security held by the Bank against the real property of the Respondents listed on **Appendix “G”** attached hereto, which security was either currently registered against title to the real property under the *Land Titles Act* (New Brunswick) or the *Registry Act* (New Brunswick) or was previously registered against title prior to the sale of such real property to a third party pursuant to an Approval and Vesting Order granted by this Court in this proceeding or the CCAA Proceeding or otherwise; and
- (d) an opinion under the laws of the Province of New Brunswick as to the validity and enforceability of the general charging language contained in the assigned general security agreements that the Bank has security interests against “all such Debtor’s present and after-acquired personal property and on all of the present and future undertaking and property, either real, personal, or movable, of such Debtor (emphasis added)” and that the Bank has security interests against the real property of the Respondents listed on Appendix “G” and not otherwise subject to a specific collateral mortgage or debenture in favour of the Bank.

New Brunswick

176. The Receiver has obtained an opinion from its New Brunswick counsel that provides, subject to what the Receiver understands to be and BLG has advised are customary assumptions and qualifications in an insolvency context, that:
- (a) the Bank has valid and enforceable security against all of the present and after-acquired personal property of each of the Respondents governed by the New Brunswick PPSA; and
 - (b) the security interests in favour of the Bank in all of the present and after-acquired personal property of each of the Respondents have been perfected by registration under the provisions of the New Brunswick PPSA and were perfected as of the applicable date of bankruptcy of each of the Respondents.
177. Additionally, with respect to the real property of the Respondents located in the Province of New Brunswick subject to collateral mortgages and/or debentures in favour of the Bank and identified on Appendix "G", the Receiver has obtained an opinion that, subject to what the Receiver understands to be and BLG has advised are customary assumptions and qualifications in an insolvency context, the collateral mortgages and debentures create, under the laws of the Province of New Brunswick, valid mortgages and charges in favour of the Bank in the applicable real property, and the mortgages and charges created by the collateral mortgages and debentures have been, or were, registered in favour of the Bank in the appropriate land title offices maintained in the Province of New Brunswick in respect of the applicable real property and are enforceable as against the Trustee of the applicable Respondent.
178. Lastly, the Receiver has obtained an opinion from its New Brunswick counsel that, subject to what the Receiver understands to be and BLG has advised are customary assumptions and qualifications in an insolvency context, a New Brunswick Court likely would hold that the general charging language contained in the Bank's security documents is sufficient to create a charge against the leasehold interests, quarry licenses, and real property held by certain Respondents, listed on Appendix "G" and not subject to

registered charges in favour of the Bank, and such charges would be enforceable by the Bank against leasehold interests, quarry licenses and real property of the Respondents in the Province of New Brunswick in priority to the rights of the Trustee of the Respondents.

Alberta, Newfoundland & Labrador and Northwest Territories

179. The Receiver has obtained opinions from its Alberta, Newfoundland & Labrador and Northwest Territories counsel that provide, subject to what the Receiver understands to be and BLG has advised are customary assumptions and qualifications in an insolvency context, that:

- (a) the Bank has valid and enforceable security against all of the present and after-acquired personal property of each of the Respondents governed by the Alberta, Newfoundland & Labrador and Northwest Territories PPSAs; and
- (b) the security interests in favour of the Bank in all of the present and after-acquired personal property of each of the Respondents have been perfected by registration under the provisions of the Alberta, Newfoundland & Labrador and Northwest Territories PPSAs and were perfected as of the date of bankruptcy of each of the Respondents.

180. Based on the foregoing and the opinions from the Receiver's counsel, the Receiver understands that all of the Property of the Respondents is subject to security held by the Bank (collectively, the "**Bank Collateral**").

181. The Receiver has been advised by the Bank that, as of July 9, 2012, the outstanding indebtedness, liabilities and obligations of Atcon Group of Companies, as secured by the Bank's security described above, inclusive of accrued interest, professional fees and applicable penalties, is approximately \$28.79 million.

G.E.

182. The Receiver understands that G.E. provided \$2.0 million in financing to Atcon Industrial pursuant to a Mortgage Loan Agreement dated May 30, 2007, that Atcon

Construction was a guarantor under the agreement and the loan was to be secured by a first-ranking mortgage on General Manson Way. The Receiver understands that G.E. registered collateral mortgages against General Manson Way on July 31, 2007.

183. In 2006 and 2007, collateral mortgages were registered against General Manson Way in favour of the Sub-Debt Lenders and the Bank; however, in February 2010, a postponement agreement was entered into between the Bank and G.E., which the Receiver understands provided that the Bank subordinated its security over General Manson Way in favour of G.E.'s security. The Receiver understands that the postponement agreement was registered on title to General Manson Way.
184. The Receiver has obtained an opinion from its New Brunswick counsel that provides, subject to what the Receiver understands to be and BLG has advised are customary assumptions and qualifications in an insolvency context, that G.E. has valid and enforceable collateral mortgages against the General Manson Way Property, and such collateral mortgages were registered in favour of G.E. in the appropriate land title offices maintained in the Province of New Brunswick in respect of General Manson Way and are enforceable as against the Trustee of Atcon Construction. A copy of the opinion is attached hereto as **Appendix "H"**.
185. The Receiver has been advised by G.E. that, as of April 26, 2012, the outstanding indebtedness, liabilities and obligations of Atcon Construction to G.E., as secured by G.E.'s collateral mortgages discussed above, inclusive of accrued interest, professional fees and applicable penalties, is in excess of \$10.5 million.

Aviva

186. The Receiver understands that Atcon Construction granted a collateral mortgage to Aviva with respect to PID 10208858 and PID 70245741 as collateral security for payment to Aviva, on demand, of all debts and liabilities owed by Atcon Construction and Atcon Holdings to Aviva by virtue of an indemnity agreement provided by Atcon Construction and Atcon Holdings to Aviva. The Receiver understands that the indemnity agreement is

with respect to certain surety bonds issued by Aviva at the request of Atcon Construction in connection with construction projects in which Atcon Construction was involved.

187. The Receiver obtained an opinion from its New Brunswick counsel in connection with the Aviva collateral mortgages over PID 10208858 and PID 70245741. The opinion provides, subject to what the Receiver understands to be and BLG has advised are customary assumptions and qualifications in an insolvency context, that Aviva has valid and enforceable collateral mortgages against PID 10208858 and PID 70245741, the Aviva collateral mortgages were registered in favour of Aviva in the appropriate land title offices maintained in the Province of New Brunswick and the Aviva collateral mortgages are enforceable as against the Trustee of Atcon Construction. A copy of the opinion is attached hereto as **Appendix "I"**.
188. The Receiver has been advised by Aviva that, as of July 10, 2012, the outstanding indebtedness, liabilities and obligations of Atcon Construction to Aviva, as secured by Aviva's collateral mortgages discussed above, is approximately \$460,780. The Receiver understands that such amount is largely comprised of legal, adjusting, consulting and appraisal expenses incurred by Aviva, with amounts totally approximately \$91,000 paid by Aviva to settle claims.

Caterpillar

189. The Receiver understands that Atcon Construction, APH and AMS are parties to a guarantee dated June 16, 2005 whereunder each party guaranteed to Caterpillar the obligations of Atcon Holdings with respect to a \$2.004 million promissory note dated June 16, 2005. The Receiver understands that, as security for the obligations owed to Caterpillar under the guarantee:
- (a) APH granted a collateral mortgage in favour of Caterpillar with respect to PID 40095887, PID 40179798 and PID 40441917; and
 - (b) Envirem granted a collateral mortgage in favour of Caterpillar with respect to PID 40450389.

190. The Receiver has obtained an opinion from its New Brunswick counsel that provides, subject to what the Receiver understands to be and BLG has advised are customary assumptions and qualifications in an insolvency context, that Caterpillar has valid and enforceable collateral mortgages against PID 40095887, PID 40450389 and PID 40441917, and the Caterpillar collateral mortgages were registered in favour of Caterpillar in the appropriate land title offices maintained in the Province of New Brunswick and are enforceable as against the Trustees of APH and Envirem. A copy of the opinion is attached hereto as **Appendix "J"**.
191. The Receiver has been advised by Caterpillar that, as of July 31, 2012, the outstanding indebtedness owed to Caterpillar, as secured by Caterpillar's collateral mortgages discussed above, is approximately \$814,144.

The Province

192. As has been previously reported to this Honourable Court, in 2009 the Province guaranteed certain of the obligations of certain of the Respondents to the Bank.
193. The Receiver understands that the Province has made a payment to the Bank under the guarantees and as a consequence, certain proceeds that otherwise would be payable to the Bank under its security are payable to the Province. The Province has confirmed that it is owed in excess of \$50,000,000.
194. The Bank and the Province have agreed that the amount of \$340,879.90 should be paid to the Province out of the proceeds of certain of the property subject to the Bank's security, subject to the approval of the Court. The Receiver is satisfied, based on the opinions that it has received in respect of the Bank's security that the Bank and, through it, the Province are entitled to the proposed payment and distribution in the amount of \$340,879.90.

PROPOSED DISTRIBUTIONS

195. As set out above, this Honourable Court has granted certain Court-Ordered Charges in the context of this proceeding that take priority over all other claims and encumbrances

against the Property of the Respondents, subject to specific provisions with respect to the priority of the Court-Ordered Charges amongst themselves.

196. To date, the mechanism to be utilized regarding payment of the amounts secured by the Court-Ordered Charges (other than the Replacement Charge) has been set out solely in paragraph 25 of the March 2 Order, which provides that:

THIS COURT ORDERS that the costs, fees, expenses and liability of the Receiver giving rise to the Administrative Charge, the Receiver's Indemnity Charge and the Receiver's Borrowings Charge... shall be paid in the following manner unless otherwise ordered by this Court:

- (A) Firstly, applying the costs incurred in the receivership proceedings specifically attributable to an individual asset or group of assets against the realizations from such asset or group of assets;
- (B) Secondly, applying the costs *pro rata* against all of the assets based on the net realization from such asset or group of assets; and
- (C) Thirdly, applying non-specific costs incurred in the receivership proceedings *pro rata* against the assets based on the net realization from such asset or group of assets

197. As a result, before a distribution of the realized proceeds of the Property of the Respondents could be made to the stakeholders of the Respondents entitled to such proceeds, the Orders require the Receiver to:

- (a) determine the direct costs of the Receiver and its counsel that were incurred with respect to the realization of such Property of the Respondents and apply such costs against the proceeds;
- (b) to the extent that the direct costs cannot be satisfied from the realization of such Property of the Respondents, applying such unsatisfied direct costs against all of the proceeds of the Respondents on a *pro rata* basis; and
- (c) determine the non-specific costs of the Receiver and its counsel incurred in this proceeding generally and apply such costs against the proceeds of the Property of the Respondents on a *pro rata* basis.

198. In considering a proposed distribution and allocation of the Court-Ordered Charges, the Receiver recognized that, given the nature, location and amount of Property of the Respondents that has been collected to date, a determination of the direct and indirect costs attributable to the realization of the Property of the Respondents would be time-consuming and costly task for the receivership estate, and could not be completed before the finalization of these receivership proceedings, the realization of all Property and the accrual of all costs.
199. As a result, the Receiver determined that it would be prudent to consult with the five (5) Secured Creditors with an interest in the Property of the Respondents to determine whether a fair and equitable basis to allocate the Court-Ordered Charges could be agreed to so that additional costs and delay could be avoided.
200. With respect to the allocation of the Administrative Charge to the property subject to the security held by Caterpillar and Aviva, the Receiver, following a consideration of a variety of proposals and calculations, proposed that a uniform 15% of the net realization proceeds be applied towards the costs of insurance, preservation of the assets, conducting sales processes and general administration of these receivership proceedings. With respect to the G.E. claim against the General Manson Way Property, the Receiver proposed that 5% of the net realization proceeds be applied towards an allocation of the costs related to the general administration of these receivership proceedings, as PwC, in its capacity as Court-appointed receiver of Atcon Industrial, satisfied the insurance, preservation and selling costs for the General Manson Way Property.
201. With respect to the Replacement Charge, the Receiver determined that, excluding the funds held in the CRA Deemed Trust Holdback and the CRA Non-Deemed Trust Holdback, an aggregate amount of approximately \$12.9 million of Property of Atcon Construction has been realized to date.
202. The Receiver engaged in discussions with representatives of the Bank and the Province regarding the proposed allocation of the Administrative Charge and the Replacement Charge to the Property of the Respondents. The Receiver obtained confirmation from the Province and the Bank of their support of the proposed allocations set out in Schedule

“C” attached hereto, and the Receiver then engaged in discussions with counsel to Aviva, Caterpillar and G.E.

203. The Receiver is pleased to report to this Honourable Court that, as a result of such discussions, the following distributions have been agreed to, as set out in the executed Consent signed by counsel to the Secured Creditors attached hereto as **Appendix “K”**:

- (a) the sum of \$808,629.63, to Caterpillar on account of its security in the Caterpillar Collateral;
- (b) the sum of \$416,074.87 to G.E. on account of its security in the G.E. Collateral;
- (c) the sum of \$174,076.42 to Aviva on account of its security in the Aviva Collateral; and
- (d) the sum of \$340,879.90 to the Province on account of its security in the Province Collateral;

204. With respect to proposed distributions to the Bank, the Receiver is of the view that it is necessary to maintain certain funds in its account in anticipation of additional fees and expenses to be incurred by the Receiver in continuing to administer these receivership proceedings in the near future, including taking continued steps to realize upon the Property of the Respondents for the benefit of the Bank and the Province.

205. As a result, the Receiver proposed, and the Province and the Bank have agreed, that the Receiver would maintain \$1,000,000.00 in its account and distribute \$7,314,321.14 to the Bank on account of the valid and enforceable security each party holds over certain of the Property of the Respondents that generated the realization proceeds.

206. The Receiver reports that, in anticipation of the motion to be heard with respect to the issues detailed in this Twenty-Third Report, the Receiver has been advised by its counsel that a copy of the Receiver’s Record on Motion will be sent to each party currently on the service list maintained by the Receiver’s counsel in this proceeding and to each party not on the service list that had a personal property security registration against the Atcon Group of Companies in the Province of New Brunswick, Province of Newfoundland &

Labrador, the Province of Alberta, and the Northwest Territories as of September 2011, along with parties that had real property registrations against real property owned by the Atcon Group of Companies in the Province of New Brunswick.

RECOMMENDATIONS AND REQUESTS

207. As set out above, each of the Secured Creditors with a proprietary interest in the realization proceeds of the Property of the Respondents has agreed to the proposed distribution of the proceeds and the proposed allocation of the Court-Ordered Charges as described in this report.
208. The Receiver is of the view that the proposed distributions provide for a fair and equitable allocation of the Court-Ordered Charges against the realization proceeds and the Secured Creditors agreements avoids the additional costs and delay that would result from a detailed allocation of all of the receivership estate costs to particular Property of the Respondents and accelerates the timing of the proposed distributions to the stakeholders of the Respondents.
209. As a result, the Receiver requests that this Honourable Court approve the proposed distributions and approve the conduct, actions and activities of the Receiver in administering these receivership proceedings to date, including the conduct, actions and activities of the Receiver set out in this Twenty-Third Report and all other reports previously filed by the Receiver in these receivership proceeding to date.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of July, 2012

ERNST & YOUNG INC.

**in its capacity as the Court-appointed
Receiver of the Respondents and not in its
personal or corporate capacity**

By: 

Paul D. Hickey, CA•CIRP
Senior Vice President

TOR01: 4500036: v17

**IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI**

IN THE MATTER OF THE RECEIVERSHIP OF:

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.

PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

BETWEEN:

**THE BANK OF NOVA SCOTIA, a Canadian chartered bank
with a registered office in the City of Saint John, Province of
New Brunswick**

APPLICANT

- and -



ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

ORDER

(Approval of Proposed Distributions to Secured Creditors and Activities of the Receiver)

Jul
31 Aug 2012

THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver manager of the property, assets and undertakings of the Respondents (the "**Receiver**") for an order, *inter alia*:

- (a) authorizing, empowering and directing the Receiver to distribute certain amounts to the Secured Creditors (as defined below), which have been agreed to and accepted by the Secured Creditors; and
- (b) approving the conduct, actions and activities of the Receiver in administering this receivership proceeding to date, including the conduct, actions and activities of the Receiver set out in this Twenty-Third Report and all other reports previously filed by the Receiver in this receivership proceeding to date,

was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Receiver's Notice of Motion dated July 25, 2012, the Twenty-Third Report of the Receiver dated July 25, 2012 and the appendices attached thereto (the "**Twenty-Third Report**"), and on hearing the submissions of counsel for the Receiver, The Bank of Nova Scotia (the "**Bank**"), the Province of New Brunswick (the "**Province**"), Caterpillar Financial Services Limited ("**Caterpillar**"), GE Canada Equipment Financing G.P. and affiliated entities (collectively, "**G.E.**"), and Aviva Insurance Company of Canada and its affiliated entities (collectively, "**Aviva**" and the "**Secured Creditors**" respectively), no other party on the service list appearing although duly served as appears from the affidavit of service of Marie Pacheco sworn July 30, 2012, and on reading the consent of the Secured Creditors to this Order,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion, the Twenty-Third Report and the Record on Motion shall be and is hereby abridged and validated so that the motion is properly returnable today, and that any further service thereof is hereby dispensed with.

Handwritten:
31 July 2012

APPROVAL OF ACTIVITIES OF THE RECEIVER

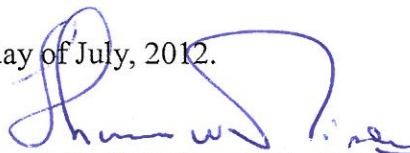
2. **THIS COURT ORDERS** that the conduct, actions and activities of the Receiver in administering this receivership proceeding to date, including the conduct, actions and activities of the Receiver set out in the Twenty-Third Report and all other reports previously filed by the Receiver in this receivership proceeding to date, be and are hereby approved.

DISTRIBUTIONS

3. **THIS COURT ORDERS** that the Receiver is hereby authorized, empowered and directed to:

- (a) distribute the sum of \$808,629.63, to Caterpillar on account of its security in the Caterpillar Collateral (as defined in the Twenty-Third Report);
- (b) distribute the sum of \$416,074.87 to G.E. on account of its security in the G.E. Collateral (as defined in the Twenty-Third Report);
- (c) distribute the sum of \$174,076.42 to Aviva on account of its security in the Aviva Collateral (as defined in the Twenty-Third Report);
- (d) distribute the sum of \$340,879.90 to the Province on account of its security in the Province Collateral (as defined in the Twenty-Third Report); and
- (e) distribute the sum of \$7,314,321.14 to the Bank on account of its security in the Bank Collateral (as defined in the Twenty-Third Report).

Dated at Miramichi, New Brunswick, this 31st day of July, 2012.



Thomas W. Riordon
Judge of the Court of Queen's Bench of
New Brunswick

3 Executive Summary

As a result of not having access to senior management's knowledge of facts, we took a conservative approach to quantifying accounts and were conservative to not utilize assumptions that would result in an overstatement of misstatements in Atcon's F2009 financial statements. Notwithstanding this approach, we are of the opinion that these financial statements have not been prepared in accordance with GAAP in all material respects. We estimate that Atcon's F2009 assets and net earnings had overstatements ranging between \$28.3MM and \$35.4MM. Certain additional other material misstatements may have occurred but we are unable to provide an estimate of value due to scope limitations, the weakness of Atcon's accounting records and/or insufficient information. We summarize our findings below:

Table 1

Subject	Section	Estimated Misstatements	Findings
Vanerply	6	Nil	
API	7	\$10MM to \$17MM	Impairment of long-lived assets.
Prepaid Lease Rentals - ACI	9	\$1.8MM	Incorrect deferral of operating lease payments.
Inventories - ACI	10	Nil	
ACI Projects	11		
Suncor	11.1	\$10.6MM	Overstatement of WP and receivables.
Albian Sands (Muskeg)	11.2	\$9.1MM	Overstatement of WP (\$2.3MM) and expensing of deferred lease payments (\$6.8MM) classified as WP.
Maritime Road Development Corp	11.3	\$- to \$1.5MM	A provision for non-collectibility is likely required for this 10 year old claim. In addition, misclassification of claim as a current asset and inadequate note disclosure.
West Tank Farms	11.4	\$3.5MM to \$4.5MM	\$2.5MM of WP for deferred labor costs which should have been expensed and \$2.0MM of claims that should have been partially or fully provided for.
Mine Maintenance and Wash Bays	11.5	\$2.3MM	ACI was in default on this project. At least a \$2.2MM WP overstatement in F2009.
Deh Cho Bridge	11.6	Nil	
Fort Hills	11.7	\$0.4MM	Accrual of \$0.4MM of WP when the project was 100% complete and ACI provided a full release.
Total Misstatement before Tax Recovery		\$37.7MM to \$47.2MM	
Potential Tax Recovery (25%)		(\$9.4)MM to (\$11.8)MM	Atcon's F2009 financial statements had a 25% provision for future taxes payable on recognized revenue that had yet to be invoiced.
Net Misstatement		<u>\$28.3MM to \$35.4MM</u>	

6 VANERPLY

6.1 Executive Summary

AHI had an \$11.2MM receivable from its parent AGI, which in turn had an investment in Vanerply. Vanerply was a sister company of AHI and accordingly, was not part of its consolidated financial statements. AGI's ability to repay the \$11.2MM owed to AHI appears dependent upon obtaining cash from its investment in Vanerply, as we have not located any financial information that would indicate that any of the other subsidiaries of AGI were in a position to pay this amount.

In analyzing the collectability of the \$11.2MM receivable from AGI, we considered the following:

- Deteriorating financial performance of Vanerply:
 - Uneven sales performance, such that F2009 sales were 9.4% lower than F2008 sales, and basically flat compared to F2007 levels;
 - \$2.0MM F2009 net income before taxes (4% of net sales) vs. \$3.9MM in F2006 (8.5% of sales), excluding exchange rate fluctuations;
 - Working capital increasingly tied up in inventory;
- Vanerply's shareholder equity of \$14.6MM at the end of F2009;
- Restrictions on Vanerply's ability to pay dividends or transfer value to AGI;
- Inability to sell or refinance Vanerply from October 2007 to January 2009, despite concerted efforts to do so;
- The illiquidity of its assets.

We do not recommend a material write-down of this receivable as Vanerply's F2009 draft financial statements indicate sufficient equity for the repayment and we have not located any contradicting financial information.

7 Atcon Plywood Inc.

7.1 Executive Summary

API is a wholly-owned subsidiary of AHL, with manufacturing facilities located in Miramichi, NB. After having operated for several years, its mill was destroyed by a fire in July 2001. The facilities were rebuilt and the company recommenced operations in January 2005.

API generated significant losses since its reopening. Its operations drained in excess of \$12MM until it was shut down by management in March 2008.

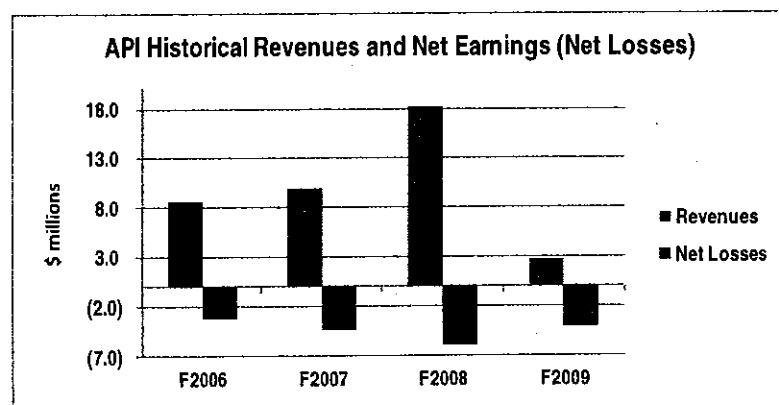
During the Fall of 2008, Management, as well as an independent consultant, recognized that the company was not viable. In order to begin to generate positive cash-flows, API required financing of \$8.8MM for the restructuring of its operations, as well as a turnaround in the North-Eastern American housing market. As at year-end F2009, the financing was not available and the housing market showed no sign of improvement.

We are of the opinion that an impairment loss should have been recognized by management as a result of continuing losses and the closing of the mill. Its fixed assets had a carrying value of \$27.6MM and we estimate the impairment loss to be between \$10MM and \$17MM as at January 31, 2009.

7.2 Continuing Losses and Shutdown of the Facility

While API's revenues increased from \$8.7MM in F2006 to \$18.2MM in F2008, API generated increasing losses. As a result, management decided to "temporarily" suspend API's operations in March 2008. Its F2009 revenues totaled only \$2.7MM, having operated less than two months.³³ API incurred \$17.6MM of cumulative losses for the four-year period ended January 31, 2009, as follows:

Chart 5



³³ Appendices 26 to 29, API's financial statements for F2006 to F2009, respectively.

9 Prepaid Lease Rentals

9.1 Executive Summary

According to GAAP, operating lease rentals should be recorded as an expense on a straight line basis over the term of the lease, unless another systematic and rational basis is more representative of the time pattern of the user's benefit.

ACI had deferred approximately \$1MM and \$2MM of operating lease expenses at the end of F2006 and F2007 respectively. These deferred amounts were reported as prepaid expenses in the annual financial statements and payments were amortized the following fiscal year. The F2007 deferred lease expenses represented approximately 18% of the company's total lease payments for that year.

ACI's equipment division began to incur large losses in F2008 (\$13.7MM), which continued in F2009 (\$16.1MM). These losses would have been even greater had all the lease payments been recognized as expenses when made.

As at the end of F2008, \$8.2MM, or 47.1% of the lease payments made during the year, were reported as prepaid expenses to be recognized in F2009. We have not located any information which would indicate that this deferral of expenses was more representative of ACI's income stream generated by its equipment, nor that it had been calculated on a systematic and rational basis. Accordingly, the F2008 year-end prepaid expense appears materially misstated.

At the end of F2009, the amount of deferred rental expenses totaled \$9.0MM, which represented 50% of the payments made during the year. A year-end adjustment transferred \$6.8MM of these deferred expenses to ACI's WIP account for the Albian Sands (Muskeg Stripping) Project. The balance of \$2.2MM was reported as a prepaid expense. Again, we have not located any accounting record which would indicate that the prepaid expense of \$2.2MM was more representative of the time pattern of ACI's benefits, nor that it had been determined on a systematic and rational basis.

We reviewed the payment terms of over ninety of ACI's major equipment leases in F2008 and F2009, and found no material prepaid rentals (\$0.6MM of prepaid in F2008 and \$0.4MM in F2009). Accordingly, there would be a misstatement of \$1.8MM in F2009 (\$2.2MM less \$0.4MM), representing the balance of deferred rentals that were reported as prepaid expenses.

The \$6.8MM of deferred lease expenses transferred to ACI's WIP, is analyzed in our review of ACI's Albian Sands (Muskeg Stripping) Project.

10 Inventories

10.1 Executive Summary

Atcon's inventories totaled \$49.3MM as at January 31, 2009. It included several components, the largest of which being ACI's WIP, having a reported value of \$39.3MM as at that date.

While the material misstatements related to ACI's WIP are presented in our sections on ACI's projects, we also note that ACI's WIP included several claims for unapproved change orders (\$9.3MM in F2008 and \$13.4MM in F2009). These claims were inconsistently reported in the notes to both ACI's and AHI's F2008 and F2009 financial statements.

ACI was not taking any provision to reflect potential difficulties in recovering claims. Rather, the company was recording revenues with profits margins as the costs associated to the claims were incurred.

Management's policy was to ignore the company's historical claims recovery as well as significant weaknesses in its internal controls, when determining the value of its claims.

AHI's inventories also included spare parts related to ACI's projects which were not tracked in an accounting sub ledger, but were capitalized and amortized over the following year, thereby delaying the recognition of project expenses. We have not located any systematic and rational basis for such accounting. Because of weaknesses in ACI's accounting records, we cannot estimate an amount of misstatement. ACI's F2009 year-end inventories totaled approximately \$3MM of finished goods and \$3.9MM of spare parts and other miscellaneous accounts.

11 ACI Projects

We comment on the following seven ACI projects covering \$67.6MM or 77% of current assets at January 31, 2009:

Table 12

(in millions of dollars)								
Job #	Project Name	Section #	Accounts Receivable	Holdback Receivable	Other Current Receivable (GL #11900)	Work in Progress ⁽¹⁾	Total - Jan. 31/09	
583	Suncor	11.1	\$ 7.5	\$ 3.4	\$ -	\$ 10.9	\$ 21.8	
637	Albian Sands Energy Inc. (Muskeg Stripping)	11.2	3.2	-	6.8	9.1	19.1	
	MRDC	11.3	-	-	-	3.1	3.1	
595	West Tank Farm Erection	11.4	-	-	-	4.5	4.5	
604/621	Mine maintenance/Wash Bay	11.5	2.6	2.4	0.7	5.2	10.9	
599	Deh Cho Bridge	11.6	-	3.3	1.2	1.5	6.1	
638	Fort Hills T&M	11.7	1.7	-	-	0.4	2.1	
TOTAL Coverage			\$ 15.0	\$ 9.1	\$ 8.7	\$ 34.7	\$ 67.6	
TOTAL as per audited Financial Statements ⁽²⁾			\$ 26.2	\$ 14.7	\$ 11.1	\$ 35.5	\$ 87.5	
PERCENTAGE Coverage			57%	62%	78%	98%	77%	

⁽¹⁾ WIP includes amounts initially recorded by management in their year-end working papers (Appendix 54) as well as amounts added to WIP via year-end adjusting journal entries.

⁽²⁾ Total refers to the audited balances for these assets only and excludes certain current assets (i.e. prepaid expenses).

11.1 Suncor Energy Inc. ("Suncor") (Project #583)

11.1.1 Executive Summary

The agreement and approved change orders between Suncor and ACI totaled \$54.2MM, for the construction of Highway 63 in Alberta, to be completed by October 17, 2008.

ACI had recognized earned revenue of \$64.8MM on the project, as at January 31, 2009, which included over \$10MM for unapproved change orders. Its F2009 financial statements include \$21.8MM of receivables and WIP (\$10.9MM each) related to the Suncor project. Management considered it 100% complete as of January 31, 2009.

One of ACI's suppliers had registered a lien on the project during January 2009 and as a result, Suncor had suspended its payments to ACI. The parties met during February 2009 and Suncor then offered \$8.2MM as a full and final settlement of all amounts due. Transportation Alberta had "punch

list" items that required remedy, and Suncor's offer was conditional upon ACI providing all outstanding deliverables by June 1, 2009. If agreed, Suncor would not pursue any counter claims which it estimated at \$3.2MM.

The offer was rejected and on March 19, 2009, ACI registered a \$25.4MM lien on the Alberta Highway. In May 2009, ACI instituted formal legal proceedings against Suncor, claiming \$37.6MM, including \$12MM for the negligence or willful acts of Suncor, the particulars of which had not yet been calculated.

We estimate that ACI's F2009 revenues and current assets related to the Suncor project, are materially misstated by a minimum of \$10.6MM. A write-down of this amount would bring the values back to the agreed contract price of \$54.2MM. Such final resolution would have required that Suncor increase its settlement offer on all outstanding issues from \$8.2MM to \$11.2MM, plus any cost incurred by ACI after its F2009 year-end. We considered the following to arrive at our estimate:

- Suncor's full and final settlement offer of \$8.2MM, in February 2009 and reconfirmed during March 2009;
- Suncor's advice that it could be asserting a further \$3.2MM of penalties for delays;
- ACI's negative history of claims recovery;
- The necessity to remedy Transportation Alberta's "punch list" items;
- Suncor's assessment that all deliverables required an execution plan to be completed by June 1, 2009;
- ACI's weak security interest as its lien was registered on soon to be provincial property, which per our understanding cannot be lienied;
- ACI's claims do not appear to be fully documented and weaknesses in its internal controls cast doubt on the reliability of their build-up;
- Certain claims were not pursued by ACI during the fiscal years when the costs were incurred;
- ACI's management's comments to its legal counsel, that a major element of the claim (fuel) could go "either way";
- Proper management of raw material costs by ACI could have reduced another substantial portion of the claim (liquid asphalt).

- Certain claims (i.e. fuel related), have not been pursued on a timely basis and were not accounted for in the fiscal period during which the costs were incurred;
- The correspondence between ACI and its legal counsel appears unable to give an unequivocal opinion as to ACI's chances of success in relation to a major element of the claim;
- Amounts being claimed by ACI are far in excess of the contract price;
- Proper management of raw material costs by ACI would have reduced another substantial portion of the claim.

11.2 Albion Sands Energy Inc. ("Albian") (Project #637)

11.2.1 Executive Summary

In the latter part of F2009, ACI and Albian signed a \$75.2MM contract for the removal of muskeg over Alberta's tar sands. The agreement had an effective date of November 1, 2008, ending on October 31, 2011. Its pricing was output based, driven by the volume (cubic meters) of muskeg stripped.

The project was suspended during February 2009, at Albian's request, apparently due to a material decline in oil prices. The receivable balance was rapidly collected, but most of the WIP was never invoiced.

ACI's F2009 financial statements include \$19.1MM of revenues related to this project. \$10MM was reported as a receivable at year-end, and \$9.1MM as WIP.

This \$9.1MM WIP was made of two amounts:

- \$2.3MM, which had been calculated by management using a percentage of completion method, based on costs to date over estimated total costs;
- \$6.8MM, which was the result of the year-end journal entry that transferred most of the deferred lease expenses to WIP.

We are of the opinion that ACI's F2009 revenues and WIP were materially misstated by \$9.1MM, for the following reasons:

- The \$2.3MM of WIP was not calculated by management in accordance with GAAP. For an output based contract such as the Albian one, the revenue and WIP, if any, should be measured based on the volume of muskeg stripped at year-end, priced at the agreed amounts.

The complete F2009 revenue had already been accrued as a receivable by ACI at year-end. Accordingly, there should be no WIP for this portion of work;

- With regard to the \$6.8MM of deferred lease expense capitalized on the project and transferred to WIP, we have not located any systematic and rational analysis which would indicate that its accounting reflected the time pattern of the project. We performed an analysis of the time pattern of Atcon's benefits from the project and determined that the company had in fact not accrued sufficient lease expense to reflect the time pattern of the projects benefits. Accordingly, there was no WIP related to the equipment rentals of the Albion project.

11.2.2 Written Agreement

The agreement between Albion and ACI had an effective date of November 1, 2008.⁷⁸ It was priced at \$75.2MM⁷⁹ and called for the removal of muskeg in Alberta's tar sand region (based on progress billing, the contract amount was increased to \$76.7MM). ACI was to strip 10.3MM cubic meters of muskeg over 3 years, to be done during the "muskeg stripping season" of November 1 to April 1 of each year.

The pricing was simple: \$3MM for mobilization and demobilization of equipment (increased to \$4.4MM per the progress billing), and \$72.2MM for the muskeg stripping. ACI was to be paid between \$6.61 and \$7.79 per cubic meter of muskeg stripped, depending on area and year.

The agreement had both a termination clause and a suspension clause as follows:

"2.2 Albion may at any time during the Term, terminate this agreement by giving Contractor fourteen (14) days' prior notice. If this Agreement is so terminated, Albion shall pay Contractor for the Services performed in accordance with this Agreement to the effective date of termination of this Agreement.

...

7. Suspension at Albion's Option

Albion may at any time by notice require Contractor to suspend the Services, Contractor shall maintain adequate personnel on call for the completion of the Services suspended, and if Albion so instructs, Albion shall pay Contractor in respect of such personnel at the applicable rates."

(Our emphasis)

⁷⁸ Appendix 69, Agreement between Albion and ACI dated November 1, 2008.

⁷⁹ Appendix 69, Page 44 of Agreement between Albion and ACI dated November 1, 2008.

Accordingly, there was no WIP related to the equipment rentals of the Albian project.

11.2.7 Interruption of Work

The work on the muskeg stripping project was suspended during the first months of F2010, as evidenced by the \$12.7MM of total progress billings to April 9, 2009 (of which \$10.9MM had already been recognized as at January 31, 2009) vs. \$23.1MM projected for Phase 1. As indicated above, the muskeg stripping season ended on April 1, 2009 for the first year of the agreement.

We were advised by Mrs. Malone that the suspension had been caused by a collapse in oil prices. A barrel of oil, which was selling at over US\$120 during the summer of 2008, when the contract was being negotiated, was selling for only US\$33 by January 31, 2009⁹⁰.

Consequently, ACI was facing significant future costs as it had committed to lease numerous pieces of equipment for several years. This, at a time, when its equipment division was already generating major losses before the Albian contract.

11.3 Maritime Road Development Corporation ("MRDC")

11.3.1 Executive Summary

A claim of \$3.1MM related to MRDC is included in ACI's F2009 WIP for work performed by ACI from 1998 to 2000. While there had been success in prior years with respect to other claims related to this project, the amount included in WIP had not changed since F2006 and there was no certainty that the claim would have been resolved during F2010. Accordingly the \$3.1MM should not have been reported as a current asset in Atcon's financial statements. Further, note disclosure in the F2009 financial statements was deficient as it did not disclose this claim.

We have a scope limitation with regard to the value of this claim, in that, among other things, we do not have a copy of the legal opinion regarding its status as at the F2009 year-end. However, given ACI's recent history on claims recovery, the age of the claim and the apparent lack of progress over the last four years, a minimum provision of 50% for non-collectability should have been considered.

11.3.2 The Written Agreements

In 1998, ACI was engaged by the MRDC JV to perform work on the Trans Canada Highway between Moncton and Fredericton, NB. Atcon performed this work from 1988 to 2000 under numerous

⁹⁰ Appendix 75, Historical of crude oil prices.

11.3.7.2 Note Disclosure

While the F2008 statements include a note regarding this claim, there is no such note or reference regarding MRDC in AHI's F2009 audited consolidated financial statement. This could lead a user of the financial statements to assume that this matter is now resolved when in fact this was not the case.

The following appeared in Note 16 Contingencies of AHI's F2008 Consolidated Financial Statements⁹⁶:

"Claims for work performed and breach of contract

The company was a subcontractor to the Maritime Road Development Corporation ("MRDC") on a construction project involving the Fredericton to Moncton Trans Canada Highway Project from 1998 to 2000.

The company has identified claims against MRDC for its work on this construction project and damages suffered as a result of MRDC's breach of contract. A majority of claims are before an arbitration panel. A smaller number are before courts in New Brunswick. The company has succeeded on every claim ruled on to date.

At January 26, 2008 \$3.1 million remains recorded in the current assets as inventories (work-in-progress).

Management continues to review the status of the claims not included in inventory and receivables based on the status of recent arbitration awards and the advice of legal advisors and may record additional MRDC claims in income in future quarters as appropriate."

11.4 West Tank Farms (Project #595)

11.4.1 Executive Summary

ACI completed work on this project in F2009 yet still reported a \$4.5MM WIP balance as at January 31, 2009. This \$4.5MM of WIP consisted of \$2.5MM of deferred labor costs, to be amortized over F2010 and F2011, and \$2MM of claims for unapproved change orders.

The recording of the deferred labor costs as WIP is not in accordance with GAAP for several reasons, including matching and conservatism principles and accounting for inventory valuation. Accordingly, it should have been written off as at January 31, 2009.

With regard to ACI's claim of \$2MM, a provision of 50% should be recorded to reflect ACI's history of claims recovery, and its internal control deficiencies during the time period when the work was performed.

⁹⁶ Appendix 3, AHI's audited consolidated financial statements for F2008.

11.4.6.2 Claims

\$2.5MM of the West Tank Farms WIP relates to the deferred costs. The balance of WIP or \$2MM, relates to disputed extras which are included in the total claims amount of \$13.5MM in note 2 of AHI's F2009 audited consolidated financial statements.

We note the following scope limitations in providing our analysis:

- We have not seen the any agreement or change order supporting the amounts claimed;
- We have not seen a legal opinion to support ACI's claim against CNRL;
- We have not seen any calculation of the amounts claimed by ACI.

In our view, it is doubtful that all of the \$2MM should have been recognized as revenue and included in WIP for several reasons:

- There is no indication that it is probable that the claim will result in additional contract revenue. We note that in Mr. Tozer's April 1, 2009 letter to CNRL, he acknowledges that attempts to date to resolve this matter by their respective staff's have been unsuccessful;
- Consideration of past experience – as noted above, ~54% of claims at the F2008 year end were subsequently written off in F2009;
- Previous experience with this customer. The April 1, 2009 letter refers to past settlements with CNRL to resolve disputes;
- The April 1, 2009 letter refers to only \$1.6MM of outstanding disputes, not \$2MM.

Given the likelihood that ACI would not be fully successful in the collection of these claim amounts and considering the requirement to recognize the full amount of the contract loss in F2009, in our opinion, to be conservative, only a portion of the \$2MM should have been recognized as revenue in F2009, if any, and thus a provision of at least 50% of the \$2MM claim is warranted.

11.5 Mine Maintenance and Wash Bays ("MMWB") (Projects #604/621)

11.5.1 Executive Summary

This was a \$38MM project with CNRL with original completion dates of July and August 2008. By January 31, 2009, ACI was far from having completed the work. It had invoiced \$24.8MM and recorded WIP of \$5.2MM, reflecting a 79% completion rate. ACI's customer referred to the situation as a "crisis".

At least one of ACI's sub-contractors had recorded a lien on the project, and CNRL was withholding payments attempting to deal directly with the sub-contractor.

As a result, CNRL reduced ACI's contracted work and entered into a direct payment arrangement with the sub-contractor shortly after the F2009 year-end.

We recalculated the year-end WIP to reflect this contract amendment, which results in a \$2.3MM reduction. We have not provisioned any amount for the "crisis" situation and potential delay penalties.

11.5.2 The Written Agreement

ACI was engaged by CNRL to perform work on the Mine Maintenance & Heavy Equipment and LVF Wash Bays in connection with the Horizon Oil Sands Project based on a contract dated April 21, 2008. The initial value of the project was \$34MM¹¹⁰. According to the progress billings (as the approved change orders could not be located), the ultimate value of this project was ~\$38MM.

Work on the project was to have commenced and been completed in F2009 by July / August 2008¹¹¹, however, work continued into F2010. As detailed below, CNRL notified ACI on multiple occasions that it was not in compliance with the timeline agreed to under the contract and was in fact in default of its obligations.

11.5.3 ACI's Current Assets Related to the MMWB Project

As at January 31, 2009, ACI's current assets related to the MMWB project totaled \$10.9MM, as follows:

Table 20

Canadian Natural Resource Ltd. Mine Maintenance and Wash Bays (#604/621) As of January 31, 2009 (in millions of dollars)		
Trade and other receivables	\$	3.3
Holdback Receivables		2.4
Work in Progress		5.2
	\$	<u>10.9</u>

¹¹⁰ Appendix 93, Contract agreement between CNRL and ACI dated April 21, 2008.

¹¹¹ Appendix 94, Contract schedule of Mine Maintenance and Wash Bays.

unaudited loss of \$6.1MM in F2010 (the majority of which is recorded in May and June 2009 after completion of the audit).

iv) F2008 to F2010

As compared to its WIP calculations included with its F2009 year-end working papers, in total, ACI ultimately recognized only 76% of projected revenue but 92% of projected costs for this project, as follows:

Table 26

(in millions of dollars)	Actual F2008-F2010	Estimated project values per F2009 WIP schedule	Percentage Realized
Revenue	\$ 29.0	\$ 38.0	76%
Costs	31.0	33.6	92%
EBITDA	<u>\$ (2.0)</u>	<u>\$ 4.4</u>	

11.6 Deh Cho Bridge Corporation Ltd. ("Deh Cho") (Project #599)

11.6.1 Executive Summary

In February 2008, ACI was granted a \$133.6MM contract to construct a bridge over the Mackenzie River, in the Northwest Territories. As of January 31, 2009, ACI had recorded \$36MM of earned revenues based on a rate of completion of 27%. However almost half of the total profit budgeted for the project was recognized. The accelerated profit recognition reflects a deferral of indirect costs which management deemed appropriate to expense at later stages in the project.

The acceleration of the profit must be viewed in the context of the following challenges which this project was facing as at January 31, 2009:

- ACI was again very much behind in its work;
- The gross margin for the total project had been budgeted at 15.9%. The gross margin on the revenue earned to January 31, 2009, was 28.0%;
- ACI's sub-contractor which was responsible for the erection of the foundation of the bridge, was threatening to halt work on the project, if its \$5MM requests for change orders were not approved;

- ACI's own change order requests which incorporated the sub-contractor's, were being challenged by Deh Cho, the project owner;
- In February/March 2009, Deh Cho put ACI on notice of defaults for delays being encountered;
- Dispute resolution mechanism between ACI and Deh Cho had to be formalized as the parties could not agree on any settlement.

We have not taken any provision to reduce the reported margin nor to account for the risks associated with an arbitration process.

11.6.2 Written Agreement

On February 22, 2008, ACI and Deh Cho signed several agreements totaling \$133.6MM, for the construction by ACI, of a 1,045 meter long 9-span bridge across the Mackenzie River, as well as two approaches to the bridge of approximately 800 meters long¹²⁰. These agreements called for the work to be completed before November 1, 2010.

The project was being monitored by Deh Cho using 2 engineering firms, Gamble and Jivkov.

The schedule of contract prices divides the \$133.6MM project in 5 parts, to be paid in the following lump sums:

Table 27

General items	\$	3.3
Earth works		8.2
Foundation works		41.1
Steel superstructure works		61.5
Concrete deck and finishing works		19.5
Total Contract Price	\$	133.6

¹²⁰ Appendices 104a to 104d; Extracts of contract documents between ACI and Deh Cho, signed on February 22, 2008.

11.7 Fort Hills / Petro Canada (Project #638)

11.7.1 Executive Summary

This was a \$1.7MM project that was fully completed in F2009. ACI had turned over the project and collected the full \$1.7MM contract price during February 2009, providing a full and final release to its customer. The \$0.4MM of WIP had no apparent basis and should not have been recorded.

11.7.2 Written Agreement

We were unable to locate the contract for this project. Based on available company records, ACI received a \$1.7MM purchase order in F2009, to pour a concrete slab floor for a waste water treatment plant. The work appears to be fully completed in F2009 as evidenced by the "Final Turnover Documentation" submitted by ACI in December 2008¹²⁶ in which it states:

"This letter is to inform you that Atcon Construction Inc. has completed the construction and installation associated with the Waste Water Treatment Plant as per the drawings and specifications."

11.7.3 ACI's Current Assets Related to the Fort Hills Project

As at January 31, 2009, ACI's current assets related to this project are \$2.1MM, as follows:

Table 30

(in millions of dollars)	
Description	As of January 31, 2009
Trade Receivables	\$ 1.7
Work in Progress	0.4
	<u>\$ 2.1</u>

- Trade Receivable: The \$1.7MM trade receivable was invoiced in January 2009 and was collected in February 2009. In connection with the collection of this receivable, K. Donovan signed a release and discharge dated February 12, 2009 on behalf of ACI¹²⁷;
- Work in Progress: In February 2009, ACI set up a \$0.4MM accrual for work in progress notwithstanding the fact that they had been paid in full, issued a release and discharge and

¹²⁶ Appendix 109, Documents entitled "Final Turnover Documentation" dated December 2008.

¹²⁷ Appendix 110, Letter from Petro-Canada to ACI dated February 2009 re: Release and Discharge.